

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
5 PRESCRIPTION OPIATE)
6 LITIGATION,) Case No.
7) 1:17-MD-2804
8)
9 THIS DOCUMENT RELATES TO) Hon. Dan A.
10 ALL CASES) Polster
11)

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Friday, April 26, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

Videotaped Deposition of DAVID S.
EGILMAN, M.D., MPH, held at the Providence
Marriott Downtown, 1 Orms Street, Providence,
Rhode Island, commencing at 9:08 a.m., on the
above date, before Debra A. Dibble, Certified
Court Reporter, Registered Diplomate
Reporter, Certified Realtime Captioner,
Certified Realtime Reporter and Notary
Public.

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1	I N D E X
2	DAVID S. EGILMAN, M.D., MPH
3	EXAMINATION BY MS. NEWMARK
4	EXAMINATION BY MS. LUCAS
5	EXAMINATION BY MS. NAKAMURA
6	EXAMINATION BY MR. ERCOLE
7	EXAMINATION BY MS. WELCH
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9	EXAMINATION BY MR. HYNES
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13	EXAMINATION BY MS. FINGER
14	EXAMINATION BY MS. SAULINO
15	
16	E X H I B I T S
17	No. Description Page
18	Egilman 32 Transmittal of
19	Advertisements and
20	Promotional Labeling for
21	Drugs and Biologics for
22	Human Use.
23	PPLP000665729-665769
24	
	Egilman 33 OTHER/OxyContin Tablets NDA
	#20-553,
	PDD1501603661-1501603669
	Egilman 34 3-8-96 letter to Diane
	Schnitzler with
	attachments,
	PPLP000614833-614856, and
	Opinion-This is the
	timeline of FDA activity
	related to opioid
	addiction-it omits
	regulatory capture

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1	Egilman 35 FDA and Opioids: What's a
2	Regulator to Do? Pain Care
3	Forum. Douglas C.
4	Throckmorton, MD
5	PowerPoint,
6	ENDO-Opioid_MDL-02791998
7	
8	Egilman 36 Opinion-Around 1997,
9	Venture members
10	Ortho-McNeil (Johnson &
11	Johnson) and Purdue began
12	co-promoting Ultram SR,
13	intended for the use of
14	more moderate pain
15	
16	Egilman 37 Non-Malignant Pain
17	Consensus Guidelines,
18	PKY181320029-181320030
19	
20	Egilman 38 Purdue Pharma, L.P.,
21	Proposal 8-26-98
22	PKY183033731-183033736
23	
24	Egilman 39 Exhibit B.77, David S.
	Egilman Report Opiate
	Litigation
	Egilman 40 Exhibit B.136, David S.
	Egilman Report Opiate
	Litigation
	Egilman 41 Opinion-ENDO was either too
	cheap to add its opioid
	labels to the 2014 PDR or
	completely irresponsible
	for this failure to warn
	doctors of any data
	concerning these dangerous
	drugs
	Egilman 42 B1, B49, B50, B94, B310,
	B398, and B454
	Egilman 43 B.6 Redweld
	Egilman 44 B.123 Redweld
	Tab 22, Exhibit 385

<p style="text-align: right;">Page 467</p> <p>1 Egilman 46 B.426 Redweld 697 2 Egilman 47 B.444 Redweld 697 3 Egilman 48 B.480 Redweld 697 4 Egilman 49 February 2010 e-mail chain. 698 Subj: RE: Call this 5 Afternoon with attachments, Acquired_ 6 Actavis_00367447-367452 plus 3 more pages 7 Egilman 50 B.487 777 8 Egilman 51 Opinion-Walmart helped 789 Actavis Market Opioids 9 Egilman 52 Opinion-Ohio Medicaid 810 depended on the PBMs for 11 formulary drug selection/handwritten 12 notations "had its own committee" 13 14 — — — — — 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 469</p> <p>1 be an expert on compliance with suspicious 2 order monitoring? 3 A. By the definition of expert 4 that I gave yesterday? Yes. 5 Q. By any other definition? 6 A. Give me another definition. 7 Q. So by your definition, you 8 purport to be an expert in suspicious order 9 monitoring? 10 A. By the definition that I gave 11 yesterday, I'm an expert in suspicious order 12 monitoring. I'm not an expert in all aspects 13 of suspicious order monitoring, but I'm 14 familiar with any aspects of suspicious order 15 monitoring. 16 Q. Are you familiar with any 17 regulations that govern the obligations with 18 respect to suspicious order monitoring? 19 A. The Controlled Substances Act 20 and -- 21 Q. Which section of the Controlled 22 Substances Act? 23 A. I don't recall. The Marino 24 bill which modified the DEA's ability to</p>
<p style="text-align: right;">Page 468</p> <p>1 PROCEEDINGS 2 (April 26, 2019 at 9:08 a.m.) 3 THE VIDEOGRAPHER: Good 4 morning. We are back on the record. 5 Today's date is April 26, 2019, and 6 the time is 9:08 a.m. 7 This is the continuation of the 8 deposition of Dr. David Egilman. 9 Counsel will be noted on the 10 stenographic record. 11 Sir, I want to remind you you 12 are still under oath. 13 Counsel, please proceed. 14 DAVID S. EGILMAN, M.D., MPH, 15 having been previously duly sworn, was 16 examined and testified as follows: 17 DIRECT EXAMINATION 18 BY MR. BLANK: 19 Q. Good morning, Dr. Egilman. I 20 am Tim Blank with the law firm of Dechert. 21 You recognize that you're still under oath. 22 Yes? 23 A. Yes. 24 Q. Dr. Egilman, do you purport to</p>	<p style="text-align: right;">Page 470</p> <p>1 enforce suspicious order monitoring 2 violations. 3 So I'm familiar with some of 4 the enforcement actions with respect to 5 suspicious order monitoring. 6 Q. And in your expert report, you 7 criticize the performance of various 8 defendants, manufacturers, distributors, 9 others, with respect to their compliance with 10 suspicious monitoring obligations -- 11 suspicious order monitoring obligations; is 12 that right? 13 A. Yes. 14 Q. What is the regulation that 15 governs suspicious order monitoring? 16 A. Do you mean under the 17 Controlled Substances Act? 18 Q. In the Code of federal 19 regulations. 20 A. I don't know the number. 21 Q. And do you consider yourself a 22 Drug Enforcement Agency expert? 23 A. I know more than the layman 24 about that. I know a lot about the DEA's</p>

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1 actions or inactions in the -- with respect
2 to the defendants in this case.

3 Q. Do you have any experience with
4 respect to DEA law enforcement?

5 THE WITNESS: Do you have
6 the -- my LiveNote.
7 (Discussion off the record.)

8 A. Do you mean personal
9 experience?

10 Q. Yes.

11 A. No.

12 Q. Do you know how the DEA applies
13 its regulations concerning suspicious order
14 monitoring?

15 A. I'm familiar with examples
16 in -- that I've read in its relation to the
17 companies involved in this case.

18 Q. Do you know what data inputs
19 the DEA looks at and considers in applying
20 the SOMs, suspicious order monitoring
21 regulations?

22 A. Some of them. They use the
23 ARCOS database to look at sales and
24 distribution. They also control the amount

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1 of basic raw materials that can come into the
2 country. Control the amount of sales which
3 relates to eventually downstream, the number
4 of narcotics that can be suspiciously
5 ordered.

6 The -- so yes. I can just say
7 yes.

8 Q. How does the DEA assess the
9 data inputs to determine whether an order is
10 suspicious or not?

11 A. I think that's changed over
12 time.

13 Q. How do they do it?

14 A. Well, they do it a variety of
15 ways. One way is they rely on reports from
16 companies about suspicious order monitoring.
17 Another is they can look at the database that
18 they have of orders over time and location.

19 They also get reports from the
20 field from a variety of law enforcement
21 agencies, press reports, which then can
22 trigger investigations about suspicious order
23 monitoring.

24 Q. Are you aware of any -- any

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1 calculations that the DEA performs to
2 determine whether an order is suspicious?

3 MS. CONROY: Objection.

4 THE WITNESS: Well, I think
5 they compare -- yes.

6 Q. (BY MR. BLANK) And what are
7 you aware of in that respect?

8 A. Well, they compare orders over
9 time to different -- by different
10 distributors to different locations.

11 Q. How do they do that?

12 A. It's different. It's changed
13 over time.

14 Q. How do they currently do it?

15 A. That, I don't know.

16 Q. When did it last change?

17 A. That, I don't know.

18 Q. How did they do it the last
19 time you knew how they did it?

20 A. They set a base and they look
21 for overage over that base by some standard
22 increase over time.

23 Q. And do you know what that
24 standard increase is?

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1 A. No. It's changed over time.

2 Q. Are you familiar with the
3 algorithm that is used to detect suspicious
4 orders?

5 A. No.

6 MS. CONROY: Objection.

7 Q. (BY MR. BLANK) Do you know how
8 any of the defendants in this case implement
9 their suspicious order monitoring practices?

10 A. Yes.

11 Q. Have you spoken to any of the
12 defendants in this regard?

13 A. No. I didn't know I was
14 allowed to. But I would be glad to.

15 Q. Have you ever consulted for the
16 Drug Enforcement Agency?

17 A. No.

18 Q. Have you ever worked for any
19 entity in the capacity of reviewing standard
20 suspicious order monitoring --

21 A. No.

22 Q. -- practices?

23 A. No. Sorry.

24 Q. Have you ever assisted anybody

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1 in developing a suspicious order monitoring
2 system?
3 A. No.
4 Q. Have you ever assisted anybody
5 in interpreting regulations relating to SOMs?
6 A. No.
7 Q. What are the U.S. Code sections
8 that apply to SOMs?
9 A. I do not know.
10 Q. What are the specific
11 requirements with respect to manufacturers?
12 A. Manufacturers are responsible
13 to report suspicious orders. There's no
14 specific delineation, as I understand it, for
15 how that's done.
16 Q. Have you reviewed DEA guidance
17 on SOM policies?
18 A. Yes.
19 Q. When?
20 A. Over the last several months.
21 Q. Which ones?
22 A. I don't recall.
23 Q. Do you reference them in your
24 report?

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1 A. I don't think so.
2 Q. By being --
3 A. Well, they are referenced in --
4 In the report, as you know, I
5 summarize the -- and then I thought provided
6 to the Department of Justice, violations of
7 suspicious order monitoring rules by many of
8 the companies, and some of that information
9 was included in the DOJ decisions.
10 Q. Yeah, I'm talking about DEA
11 guidance on SOM policies.
12 A. Right.
13 Q. Okay. And then tell me once
14 again, because I can't recall if you told me
15 already. What is the basis for your claim to
16 be an expert on whether any of these
17 defendants are complying with their SOM
18 obligations?
19 A. I used the methodology
20 explained in my report to review the
21 documents, to look at that issue. And I
22 examined, for example, the violations of SOM
23 procedures, e-mails, other documents, and
24 made conclusions about SOM violations based

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1 on statements made by company officials in
2 e-mails and memos, and in some cases,
3 deposition testimony. And the compliance
4 enforcement actions of the DEA.
5 Q. But just because you did that
6 doesn't make you an expert. I want to know
7 what makes you an expert.
8 MS. CONROY: Objection.
9 THE WITNESS: Okay. I'm
10 telling you that what I just said
11 makes me an expert by my definition of
12 an expert. Very few people,
13 independent of the companies, have
14 been able to review the e-mails,
15 communications, documents, and detail
16 related to the company's lack of
17 adequate enforcement of suspicious
18 order monitoring rules, regulations,
19 procedures. So that means I know more
20 about it than a layman. And that
21 means -- and I can explain it to a
22 layman.
23 So by my definition of an
24 expert, which may be different than

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1 your definition of an expert, that is
2 my expertise.
3 Q. (BY MR. BLANK) Did anybody
4 except the plaintiffs in this case ever ask
5 you for your expert opinion on SOM
6 compliance?
7 MS. CONROY: Objection.
8 THE WITNESS: No.
9 Q. (BY MR. BLANK) Doctor Egilman,
10 did you do anything to prepare for your
11 deposition today?
12 A. Yes.
13 Q. And yesterday?
14 A. Yes.
15 Q. What did you do? Specifically
16 to prepare for the deposition.
17 A. I reread the report. Took
18 notes. Made notes on them.
19 I spent a couple days with the
20 plaintiff lawyers two days before the
21 deposition.
22 Q. Which -- when did you meet with
23 the plaintiffs' lawyers?
24 A. On Tuesday and Wednesday.

<p style="text-align: right;">Page 479</p> <p>1 Q. Full days?</p> <p>2 A. Five, six hours each day.</p> <p>3 Q. Where?</p> <p>4 A. Here.</p> <p>5 Q. Where exactly? In this hotel?</p> <p>6 A. In this hotel.</p> <p>7 Q. Who was present?</p> <p>8 A. Different people different</p> <p>9 days. Ed Wallace the first day. Jayne</p> <p>10 Conroy the second day. Ellyn Hurd both days.</p> <p>11 Erin Dickinson the first day. Dave Buchanan</p> <p>12 the second day. Jonathan Jaffe.</p> <p>13 Q. Were they all lawyers?</p> <p>14 A. Mr. Jaffe is not a lawyer.</p> <p>15 Q. So you met with five lawyers</p> <p>16 and Mr. Jaffe?</p> <p>17 A. Yes.</p> <p>18 Q. Anybody else?</p> <p>19 A. That's all I can recall. There</p> <p>20 may have been other lawyers whose names have</p> <p>21 escaped.</p> <p>22 Q. Were lawyers also on the phone</p> <p>23 from time to time?</p> <p>24 A. Not that I know of.</p>	<p style="text-align: right;">Page 481</p> <p>1 the country. And that they had sued</p> <p>2 manufacturers and distributors for two</p> <p>3 claims, the nuisance claim and the RICO</p> <p>4 claim. And that the suit was based on the</p> <p>5 harms, the cost of the harms done to the</p> <p>6 plaintiffs in the case, costs of those harms.</p> <p>7 And that's basically it. Generally.</p> <p>8 Q. And who told you that?</p> <p>9 A. Probably Ms. Conroy.</p> <p>10 Q. Pardon?</p> <p>11 A. Ms. Conroy.</p> <p>12 Q. Anybody else?</p> <p>13 A. Not in November.</p> <p>14 Q. Which -- have you read the</p> <p>15 complaint in the action in which you are</p> <p>16 purporting to testify as an expert?</p> <p>17 A. Yes.</p> <p>18 Q. Which complaint have you read?</p> <p>19 A. Read the complaint in this</p> <p>20 case. I read the complaint in the</p> <p>21 Massachusetts case. I read the complaint in</p> <p>22 the New York case. I think I read some of</p> <p>23 the complaint in the Oklahoma case.</p> <p>24 Q. Did you read the entire</p>
<p style="text-align: right;">Page 480</p> <p>1 Q. Were any of your staff or</p> <p>2 student research assistants present?</p> <p>3 A. They were in and out for some</p> <p>4 part of the time, yes.</p> <p>5 Q. They travel from your office to</p> <p>6 this hotel to meet?</p> <p>7 A. Right. Well, not -- they</p> <p>8 schlepped a lot of material here, so yes.</p> <p>9 Q. Did you make any notes with --</p> <p>10 in connection with your preparation?</p> <p>11 A. Yes.</p> <p>12 Q. Have you shared those with us?</p> <p>13 A. Yes.</p> <p>14 Q. Are there any notes that you</p> <p>15 have not shared with us from your</p> <p>16 preparation?</p> <p>17 A. I don't think so.</p> <p>18 Q. When you were retained by the</p> <p>19 plaintiffs in November of 2018, what were you</p> <p>20 told about the litigation?</p> <p>21 A. I don't recall specifically.</p> <p>22 Q. How about generally?</p> <p>23 A. Generally? I was told of the</p> <p>24 lawsuits by cities and counties from around</p>	<p style="text-align: right;">Page 482</p> <p>1 complaint in this case?</p> <p>2 A. Yes.</p> <p>3 Q. Can you recall what it says in</p> <p>4 that complaint about MS Contin?</p> <p>5 A. No.</p> <p>6 Q. Do you recall if it says</p> <p>7 anything about MS Contin?</p> <p>8 A. I think MS Contin was not</p> <p>9 mentioned in the complaint.</p> <p>10 Q. And I believe yesterday you</p> <p>11 testified about many of the documents that</p> <p>12 you reviewed in preparing your expert report.</p> <p>13 Were you sent any documents specifically</p> <p>14 relating to Cuyahoga or Summit counties?</p> <p>15 A. Yes.</p> <p>16 Q. Which ones?</p> <p>17 A. Well, I read the depositions</p> <p>18 through the Summit, Cuyahoga County people</p> <p>19 responsible for the health plans. And I read</p> <p>20 the deposition of the Medicaid person for the</p> <p>21 state of Ohio with respect to the</p> <p>22 formularies.</p> <p>23 I gave you a Summit County --</p> <p>24 or there was a Summit County PowerPoint.</p>

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1 There were documents in the database that I
2 had that weren't sent to me, but they were in
3 the database. One of those is a Summit
4 County PowerPoint that I mentioned yesterday.
5 So there were other Summit Cuyahoga County
6 documents. For example, there is an ROI
7 squared document that deals with Cleveland
8 Clinic and KOLs in Cuyahoga County.
9 And I've got documents related
10 to physicians who've been accused of and
11 sometimes convicted of overprescribing. So I
12 had those documents.
13 Q. Were -- those physicians were
14 from Summit or Cuyahoga counties?
15 A. I think so.
16 Q. Do you remember the names?
17 A. No, but they're in the --
18 they're in my report.
19 Q. Did you --
20 A. Can I just finish my answer?
21 You asked me for all of the
22 documents that I reviewed.
23 Q. Okay. You can -- I'm satisfied
24 with what you've said so far. I'd like to

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1 follow up on some of the things you've said.
2 A. That's great. So my answer is
3 incomplete.
4 Q. Well, when was -- have you ever
5 been to Ohio?
6 A. Yes.
7 Q. When was the last time you
8 went?
9 A. To Ohio? Probably 2005, 2006
10 time period.
11 Q. Have you -- and during that
12 trip to Summit -- or Ohio, did you go to
13 Summit or Cuyahoga County?
14 A. Not on that trip.
15 Q. Since you've been retained in
16 this case, which was November of 2018, you
17 have not been to Ohio; correct?
18 A. That's correct.
19 Q. Have you interviewed any
20 prescribers from Summit or Cuyahoga counties
21 in Ohio?
22 A. Not since -- not in the last
23 several years.
24 Q. Pardon?

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1 A. Not in the last several years.
2 Q. Have you ever interviewed any
3 prescribers from Summit or Cuyahoga counties
4 in Ohio?
5 A. I believe so.
6 Q. When?
7 A. I can't recall the year, but I
8 attended a conference in Cleveland and there
9 were prescribers there and I spoke to them.
10 Q. Did you -- yeah, do you recall
11 their names?
12 A. No.
13 Q. How long did you speak with
14 them for?
15 A. I think it was a one-day
16 conference, so that day.
17 Q. You spoke with them all day?
18 A. Well, I was speaking to lots of
19 people from Cleveland at that time. They
20 were mostly physicians.
21 Q. How many?
22 A. I don't recall.
23 Q. And did you -- did you discuss
24 opioid prescriptions with them?

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1 A. I can't recall.
2 Q. Since you've been retained in
3 this case, have you discussed with any
4 prescriber from Cuyahoga or Summit County
5 whether they saw any marketing messages by
6 any defendants in this case that they say
7 were misleading?
8 A. No.
9 Q. Have you ever had such a
10 discussion with any such prescribers for
11 Summit or Cuyahoga counties?
12 A. No.
13 Q. So I take it, then, you've
14 never asked any of such prescribers from
15 Cuyahoga or Summit County whether they've
16 relied on any marketing messages by any of
17 the defendants in this case in making
18 prescriptions decisions; correct?
19 A. No.
20 Q. That's incorrect?
21 A. Correct.
22 Q. Have you ever asked or spoken
23 with any prescribers from Cuyahoga or Summit
24 counties whether they wrote any medically

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1 unnecessary opioid prescriptions for anyone
2 in either of those two counties based on
3 misleading marketing messages?
4 MS. CONROY: Objection.
5 THE WITNESS: Do you mean
6 personally asked?
7 Q. (BY MR. BLANK) Correct.
8 A. No.
9 Q. Have you interviewed any
10 patients who received opioid prescriptions in
11 Cuyahoga or Summit County?
12 A. No.
13 Q. When you were retained in this
14 case, did you receive any summaries of any
15 type from plaintiffs' counsel?
16 A. Aside from the complaints? No.
17 Q. Well, the complaint's not a
18 summary. I meant a summary where a -- the
19 plaintiffs' lawyers have summarized issues or
20 summarized deposition testimony or summarized
21 documents for you.
22 A. Not that I can recall.
23 Q. Did you receive any medical
24 literature from plaintiffs' counsel?

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1 A. No.
2 Q. Have you received any summaries
3 of testimony from plaintiffs' counsel,
4 whether those summaries are verbal or
5 written?
6 A. We've discussed the testimony
7 given in the case, yes.
8 Q. What's the -- you discussed the
9 testimony you've given so far in this case?
10 A. Discussed the testimony? Have
11 I discussed the testimony that I gave
12 yesterday?
13 Q. No. Have you discussed with
14 plaintiffs' counsel the testimony given by
15 other witnesses in this case?
16 A. Yes.
17 Q. Which witnesses did you
18 discuss?
19 A. I think Rosen, Sade,
20 Kathe Sackler, Richard Sackler.
21 And some other testimony that I
22 think I cited in the report.
23 Q. What were you told --
24 A. We probably discussed that.

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1 Q. What were you told about
2 Rosen's testimony?
3 A. I don't recall.
4 Q. What were you told about Sade's
5 testimony?
6 A. I don't recall.
7 Q. What were you told about
8 Kathe Sackler's testimony?
9 A. I don't recall.
10 Q. What were you told about
11 Richard Sackler's testimony?
12 A. I don't recall.
13 Q. Just to confirm, you were not
14 given any written summaries of any of the
15 testimonies?
16 A. I got full depositions.
17 Q. Full transcripts but not
18 summaries from counsel?
19 A. Right.
20 Q. Dr. Egilman, are you familiar
21 with 21 CFR -- that's the Code of Federal
22 Procedure, Section 1301.74?
23 A. Not by number.
24 Q. So you don't know what that is?

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1 A. Not by number.
2 Q. That number doesn't ring a bell
3 with you?
4 A. The number doesn't ring a bell
5 to me.
6 Q. Dr. Egilman, would you agree
7 that chronic pain is a serious medical
8 condition?
9 MS. CONROY: Objection.
10 THE WITNESS: Yes and no.
11 Q. (BY MR. BLANK) Would you agree
12 that chronic pain affects millions of people
13 in the United States?
14 A. Probably, but I'm not sure.
15 Q. Would you agree that chronic
16 pain affects people in Summit County, Ohio?
17 A. Yes.
18 Q. Would you agree that chronic
19 pain affects people in Cuyahoga County, Ohio?
20 A. Yes.
21 Q. Do you agree that there are
22 risks associated with untreated chronic pain?
23 A. From the underlying disease
24 that causes the pain, yes.

<p style="text-align: right;">Page 491</p> <p>1 Q. Do you agree that every patient 2 should be treated individually? 3 A. No. 4 Q. Do you agree that there is no 5 single treatment option that is appropriate 6 for every chronic pain patient? 7 A. Yes. 8 Q. Do you agree that it is 9 important for physicians to have a variety of 10 treatment options to choose from when 11 treating a medical condition? 12 A. I answered that one yesterday, 13 and let me accept the same answer. But I can 14 repeat -- 15 Q. I do recall you did answer that 16 yesterday. I don't need to hear it again. 17 Do you agree that all 18 treatments for chronic pain have risks? 19 A. No. 20 Q. Do you agree that's the role of 21 the prescribing physician, to weigh risks and 22 benefits of any pain medication when treating 23 an individual patient? 24 A. When they can.</p>	<p style="text-align: right;">Page 493</p> <p>1 best judgment that he or she has when 2 deciding whether to prescribe a medication 3 for pain; correct? 4 A. No. Same answer. 5 Q. Whatever the best judgment of 6 that physician is, shouldn't that physician 7 use that best judgment? 8 A. If you are an -- if you are an 9 opioid addict physician, right, I don't think 10 you should be using any judgment. I don't 11 think you should be prescribing or 12 practicing. Okay? 13 So best judgment, medium 14 judgment, low judgment doesn't matter. Some 15 physicians are not -- because of their 16 vocation, their personal problems, other 17 medical issues, other issues, should not be 18 using any judgment, should not be 19 prescribing. 20 Q. So for -- let's carve out those 21 physicians that you claim are incapable of 22 having appropriate judgment. And of the 23 physicians that do have judgment, do you 24 agree they should use their best judgment</p>
<p style="text-align: right;">Page 492</p> <p>1 Q. Do you agree that a physician 2 should use his or her best judgment when 3 deciding whether to prescribe a medication 4 for pain? 5 A. I'm not sure. It's too broad. 6 It includes all physicians. Physicians have 7 different judgments. 8 Q. Do you think some physicians 9 should not use their best judgment? 10 A. I think some physicians don't 11 have good judgment. I can't evaluate -- I 12 can't answer that question without, you know, 13 some physicians are addicted to opioids, for 14 example. When you're addicted to opioids, 15 you lose good judgment. 16 Q. Okay. 17 A. You may use the best judgment 18 that you have, but because you're addicted to 19 opioids, your best judgment may not be 20 adequate for treating the patient. So there 21 are -- it's a more complicated question than 22 just that answer would imply. 23 Q. Sir, would you -- understood. 24 But you agree that a physician should use the</p>	<p style="text-align: right;">Page 494</p> <p>1 when prescribing medicine for pain? 2 MS. CONROY: Objection. 3 THE WITNESS: I think it's too 4 vague a question for me, because I 5 don't know how to assess best judgment 6 for all physicians. 7 Q. (BY MR. BLANK) I'm not asking 8 you to. I'm just asking you whether you 9 agree that the physicians who have judgment 10 should use the best of that judgment when 11 prescribing pain medications for their 12 patients. 13 A. Sorry. 14 MS. CONROY: Objection. 15 THE WITNESS: It's a vague and 16 ambiguous question. 17 I have good judgment, but you 18 don't want me operating on your 19 coronary arteries. No matter what my 20 judgment is, I shouldn't be doing 21 that. 22 Q. (BY MR. BLANK) You said 23 yesterday that you prescribed opioids to one 24 of your patients; correct?</p>

<p style="text-align: right;">Page 495</p> <p>1 A. In part.</p> <p>2 Q. You said yesterday, I believe,</p> <p>3 that you prescribed opioids to one of your</p> <p>4 patients who was an addict. Correct?</p> <p>5 A. That's what I believed at the</p> <p>6 time, yes.</p> <p>7 Q. Okay. And were you using your</p> <p>8 best judgment when you did that?</p> <p>9 A. Yes. I was trying to get him</p> <p>10 off the opioids. I couldn't just stop them.</p> <p>11 Put him in withdrawal.</p> <p>12 Q. Dr. Egilman, do you agree that</p> <p>13 students in medical school learn that opioids</p> <p>14 are addictive?</p> <p>15 A. When?</p> <p>16 Q. Ever. In medical school.</p> <p>17 MS. CONROY: Objection.</p> <p>18 THE WITNESS: Do you mean</p> <p>19 medical school now? Or medical school</p> <p>20 when I went to medical school? Or</p> <p>21 medical school when someone else went</p> <p>22 to medical school in 1960?</p> <p>23 Q. (BY MR. BLANK) Now.</p> <p>24 A. I don't think all of them do.</p>	<p style="text-align: right;">Page 497</p> <p>1 specialist in your view?</p> <p>2 A. I manage patients with pain all</p> <p>3 the time.</p> <p>4 Q. Are you a specialist in that</p> <p>5 field? "Yes" or "no"? Or I don't know?</p> <p>6 Which of those?</p> <p>7 A. Do you want a "yes" or "no"?</p> <p>8 Yes, I manage patients with pain all the</p> <p>9 time.</p> <p>10 Q. Okay. Listen to my question,</p> <p>11 then. Are you a pain management specialist?</p> <p>12 A. Yes. I manage pain all the</p> <p>13 time in my practice. When I was practicing.</p> <p>14 Q. Are you an addiction expert?</p> <p>15 A. Yes.</p> <p>16 Q. On what basis?</p> <p>17 A. I've taken -- I've learned</p> <p>18 about addiction in my residency and training.</p> <p>19 I've treated patients who were addicted.</p> <p>20 I've developed programs to treat addiction.</p> <p>21 I've treated a lot of patients with</p> <p>22 addiction. I had to get them unaddicted. On</p> <p>23 that basis. And I've studied addiction and</p> <p>24 addiction issues relatively intensively since</p>
<p style="text-align: right;">Page 496</p> <p>1 I don't think it's a uniform part of the</p> <p>2 curriculum, per se.</p> <p>3 Q. Did you?</p> <p>4 A. I had no lecture on opioid</p> <p>5 addiction that I can recall in medical</p> <p>6 school.</p> <p>7 Q. Did you learn it otherwise in</p> <p>8 medical school?</p> <p>9 A. No. I think I learned it</p> <p>10 otherwise, not in medical school.</p> <p>11 Q. So you did not --</p> <p>12 A. I did not in medical school.</p> <p>13 Q. So you did not learn in medical</p> <p>14 school that opioids are addictive?</p> <p>15 A. No. I learned it was -- I knew</p> <p>16 opioids were addictive before I went to</p> <p>17 medical school. I didn't have a lecture on</p> <p>18 opioid addiction in medical school that I can</p> <p>19 recall.</p> <p>20 Q. Dr. Egilman, are you a pain</p> <p>21 management specialist?</p> <p>22 A. I manage patients with pain.</p> <p>23 That's what I've done my whole life.</p> <p>24 Q. Are you a pain management</p>	<p style="text-align: right;">Page 498</p> <p>1 the late 1990s.</p> <p>2 Q. Are you board certified?</p> <p>3 A. Yes.</p> <p>4 Q. In addiction?</p> <p>5 A. No.</p> <p>6 Q. Are you board certified in pain</p> <p>7 management?</p> <p>8 A. No.</p> <p>9 Q. Are you a toxicologist?</p> <p>10 A. I practice toxicology. I</p> <p>11 evaluate toxicology as a part of occupational</p> <p>12 environmental medicine.</p> <p>13 Q. Are you board certified?</p> <p>14 A. In toxicology? I don't -- no,</p> <p>15 I'm not.</p> <p>16 Q. What are you board certified</p> <p>17 in?</p> <p>18 A. Internal and occupational</p> <p>19 medicine. In preventive occupational</p> <p>20 medicine, and I'm board eligible in</p> <p>21 preventive medicine.</p> <p>22 Q. Are you a board-certified</p> <p>23 epidemiologist?</p> <p>24 A. There is no board in</p>

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1 epidemiology.
2 Q. Do you consider yourself a
3 regulatory expert?
4 A. Yes.
5 Q. On what basis?
6 A. Well, I took two courses at the
7 Harvard Law School on regulations of
8 occupational environmental health. That was
9 one course taught by Nick Ashford,
10 A-S-H-F-O-R-D.
11 And a second law school course
12 taught by him on environmental law and
13 regulation and all aspects of those.
14 I teach about FDA regulation in
15 my course. I've published about FDA
16 regulation or lack thereof in published
17 papers.
18 I've testified in front of FDA
19 regulatory bodies.
20 Q. More than once?
21 A. Can I finish my answer before
22 you interrupt?
23 You're a lawyer. You can cut
24 me off anytime you like, so -- according to

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1 the judge's rule, but you can just say you've
2 heard enough and I'll stop.
3 Q. Are you close to finishing?
4 A. I don't know. Probably not.
5 Q. Okay. Did you testify -- then
6 I'll -- you -- I'll take what you've said so
7 far.
8 A. Okay. Then let me just put on
9 the record that the answer is incomplete.
10 Q. How many times did you testify
11 before the FDA?
12 A. I think two or three times.
13 Q. When was the last time?
14 A. The last time was 2013.
15 Q. How long did you testify for?
16 A. It was testimony by video, so
17 if I remember all the video and PowerPoints,
18 five or ten minutes.
19 Q. And you included the transcript
20 in your report; correct?
21 A. Yes. And the PowerPoint that
22 went with it.
23 Q. And it looked to me like your
24 testimony lasted maybe ten minutes? Does

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1 that sound about right?
2 A. Could be.
3 Q. And I didn't see that you were
4 asked any questions.
5 A. Well, I was in Grenada teaching
6 an occupational health course. I wasn't at
7 the DFA meeting. I sent them the testimony,
8 and it was played on a video, so.
9 Q. It wasn't live?
10 A. It was on the video. I was
11 live in Grenada teaching at a medical school
12 when the testimony went on.
13 Q. Was your testimony live or was
14 it recorded and then delivered to the FDA?
15 A. I recorded it and submitted it
16 and it was played at the FDA hearing.
17 Q. Are you currently employed?
18 A. Yes.
19 Q. By whom?
20 A. Never Again Consulting.
21 Q. Anybody else?
22 A. Well, I teach at Brown, so
23 that's kind of -- that's an employment
24 contract, I guess.

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1 Q. Who owns Never Again
2 Consulting?
3 A. I do.
4 Q. Anybody else own it?
5 A. No.
6 Q. Do you have W-2 employees?
7 A. Do you mean do I issue W-2s to
8 people who work for me?
9 Q. Yeah.
10 A. Yes.
11 Q. How many?
12 A. 10. 12.
13 Q. And of any of the people that
14 assisted you in the preparation of your
15 report that you named yesterday, are those --
16 any of those W-2 employees?
17 A. Yeah. They get paid and we
18 issue W-2s to them.
19 Q. Okay. And how about the
20 students who assisted you? You paid them;
21 correct?
22 A. Yes.
23 Q. Did you issue W-2s to them?
24 A. We haven't -- it's not time to

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1 issue W-2s. They were working in January and
2 late December. I don't think -- maybe -- I
3 don't think they got paid in December, so it
4 would have been next year.
5 Q. Next year do you expect to
6 issue W-2s to them?
7 A. I don't know. I assume so.
8 Q. Do they --
9 A. If they make less than 6 or
10 \$700, we don't have to issue W-2s. But if
11 they make more than that, we do have to issue
12 W-2s. So it will depend how much money they
13 made.
14 Q. Do you consider them to be your
15 employees?
16 A. I consider them to be contract
17 workers who are working for they. I'm not
18 sure what the -- I direct what they do. I
19 think they would be considered part-time
20 employees while they're working for me, yes.
21 Q. Yesterday you testified about
22 the hourly rates that you pay your employees
23 and these -- some of the students that work
24 for you. Is the amount that you pay them the

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1 same amount that you charge the plaintiffs?
2 A. No, I charge the plaintiffs
3 much more than what I charge them because I
4 bill for my time.
5 Q. No, but if you pay an employee
6 \$40 an hour, what do you bill the plaintiffs?
7 A. I don't know. Something more
8 than that.
9 Q. How much more?
10 A. I don't know. 60 or \$70 an
11 hour, something like that.
12 Q. So you have a 50 to 75 percent
13 markup on hourly rates?
14 MS. CONROY: Objection.
15 THE WITNESS: No.
16 Q. (BY MR. BLANK) What's --
17 So you do mark up the hourly
18 rates. That is, you charge the plaintiffs
19 more for every hour that the students work
20 that you pay them; correct?
21 MS. CONROY: Objection.
22 THE WITNESS: No.
23 Q. (BY MR. BLANK) If you pay a
24 student \$40 an hour, what do you charge the

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1 plaintiffs?
2 A. Students don't get paid \$40 an
3 hour. Students get paid \$20 an hour. My
4 full-time employees get paid about \$40 an
5 hour sometimes.
6 Q. Okay. But you mark up both;
7 correct?
8 A. No. We haven't billed on the
9 students yet, so I don't think --
10 We'll probably --
11 I wouldn't call it a markup.
12 But do we charge exactly what they pay them
13 in a W-2? No because we pay benefits. I
14 give bonuses. When they -- we do a fixed
15 rate. So if they're working time and a half
16 or double time, then they're making 60, 70,
17 \$80 an hour, plus benefits, which is another
18 20 percent.
19 Plus, for example, I take my
20 entire staff on vacations. That gets
21 covered. I pay bonuses to the staff. So all
22 in all, it's pretty much a wash. They're not
23 a major profit center for me.
24 Q. What's your current title at

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1 Brown?
2 A. Clinical professor, department
3 of family medicine.
4 Q. And I can't remember if you
5 testified to this. Do you get paid by Brown?
6 A. I get a library card, which is
7 probably worth about \$50,000 to me. And when
8 I'm teaching a course in the school of public
9 health, they paid my parking.
10 Q. Do you get tax on that \$50,000
11 library card?
12 A. I do not.
13 Q. Do you currently have any
14 practicing privileges at any hospitals?
15 A. No.
16 Q. Do you have admitting
17 privileges at any hospitals?
18 A. No.
19 Q. Are you currently seeing any
20 patients at any hospitals?
21 A. No.
22 Q. Are you currently seeing any
23 patients anywhere?
24 A. Right. We went over that

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1 yesterday. Do you want me to repeat that
2 testimony?
3 Q. No.
4 What are the professional
5 organizations in which you are currently a
6 member?
7 A. AMA, APHA, AHRP, a couple of
8 geological societies. I have to look at my
9 CV to remember them all.
10 Q. But that's where they're
11 listed?
12 A. They're there.
13 I have my CV here someplace.
14 Q. I have it too. It's okay.
15 We'll get to that.
16 Do you consider yourself an
17 expert in marketing?
18 A. Yes.
19 Q. And do you consider yourself
20 specifically an expert in pharmaceutical
21 marketing?
22 A. And device. Medical marketing.
23 Q. Medical marketing. That's
24 pharmaceuticals and devices?

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1 A. Correct.
2 Q. And is that because you believe
3 you know more than the layperson in those
4 fields?
5 A. That would be a beginning.
6 It's also because I've studied marketing
7 practices. I've published peer-reviewed
8 papers on marketing practices. I teach on
9 marketing practices. I give lectures on
10 marketing practice at APHA and other
11 universities. I've written book chapters on
12 marketing practices in I think two or three
13 books.
14 So there's a lot of different
15 bases for why I think I'm an expert on
16 marketing practices of pharmaceutical
17 companies.
18 Q. Do you consider yourself an
19 expert in pharmaceutical labeling?
20 A. Yes.
21 Q. Do you consider yourself an
22 expert in warnings on such labels?
23 A. Yes.
24 Q. On what basis?

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1 A. Well, I wrote two chapters in
2 the book "Handbook of Warnings and Risk
3 Communication." And then all the other
4 things that I just said, which I will be glad
5 to repeat. I've published in
6 peer-reviewed --
7 Q. No need.
8 A. Okay. My answer is incomplete.
9 Go ahead.
10 Q. No, I said no need to repeat
11 it, because you've referenced it. You
12 referenced the two chapters. Anything else
13 besides what you've already testified about?
14 A. I've given talks on warnings
15 and risk communication.
16 Q. Do you consider yourself an
17 expert in the drug approval process?
18 A. Yes.
19 Q. Do you know which government
20 agencies regulate drug approvals?
21 A. Yes.
22 Q. Which ones?
23 A. FDA.
24 Q. Any others?

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1 A. Well, for some -- some --
2 depends what you consider drug, but Consumer
3 Product Safety Commission might regulate some
4 over-the -- some cosmetics, which can be
5 advertised as having medical benefits.
6 Generally they'd regulate them to say you
7 can't say that, so they regulate that.
8 Q. Are you familiar with the new
9 drug application process at the FDA?
10 A. Yes.
11 Q. We will refer to that as NDA.
12 Is that all right?
13 A. Yes.
14 Q. Have you ever worked on a new
15 drug application with the FDA?
16 A. No.
17 Q. Have you ever worked with the
18 FDA on any drug approval?
19 A. No.
20 Q. Have you ever reviewed a new
21 drug application?
22 A. For the FDA?
23 Q. Yes.
24 A. No.

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1 Q. Have you ever been involved in
2 submitting an NDA?
3 A. No.
4 Q. Do you know what an NDA
5 submission entails?
6 A. Yes.
7 Q. What is required?
8 A. Well, NDA submissions are
9 hundreds of boxes of material. So you -- you
10 first of all, before the NDA process starts,
11 the company has to negotiate with the FDA the
12 kinds and quality and size of the studies
13 that are going to be done to get the drug
14 approved. And that's a negotiated process.
15 Then there's usually three
16 levels of -- three levels of studies that are
17 done. Some toxicity studies to start, then
18 level two studies, which would involve small
19 trials that might look for benefit, and then
20 the third level would be randomized
21 controlled trials, then you'd focus on
22 benefits.
23 Generally the organization
24 standards would say that those studies have

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1 to include at least 2 to 300 patients. The
2 FDA generally requires two RCTs that are --
3 have a statistically significant result. And
4 what's not required is that the company
5 doesn't have to turn over all of the studies.
6 The company may do 30 studies. Of those
7 studies produce two that were positive and
8 just submit those two and not submit the
9 others.
10 Q. I'm going to stop you here and
11 I'll note for the record that your answer is
12 not complete, because I want to move on to
13 the next question.
14 Do you agree that the FDA has
15 to approve the label for every drug?
16 A. The label is negotiated, and
17 the approval is agreed to by the company and
18 the FDA.
19 Q. But if the FDA doesn't approve
20 the label, it does not go on the packaging;
21 correct?
22 A. If the FDA doesn't finally --
23 they generally -- the letter that --
24 Q. It's a yes-or-no question.

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1 MS. CONROY: Objection.
2 Q. (BY MR. BLANK) Can you answer
3 it "yes" or "no"?
4 A. No.
5 Q. So there are labeled -- drug
6 labels on drug packaging that have not been
7 approved by the FDA in the United States?
8 Prescription drugs?
9 A. There are prescription drugs
10 that when packaged and given to the patient
11 include information that's not been approved
12 by the FDA.
13 A lot of pharmaceutical
14 company -- a lot of pharmacies put their own
15 short version instructions on the label -- on
16 the packaging in the bag that the patient
17 gets. That's not, as far as I understand,
18 approved by the FDA.
19 Q. But the manufacturer's label is
20 approved by the FDA; correct?
21 A. That is correct. That wasn't
22 the question you asked.
23 Q. I just asked it.
24 A. That's correct. I'm just

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1 saying it wasn't the question you asked
2 before.
3 Q. And you understand that the FDA
4 regulates prescription drug promotion in this
5 country?
6 A. Yes and no.
7 Q. Have you communicated with
8 anyone at the FDA about Purdue?
9 MS. CONROY: Objection.
10 THE WITNESS: Aside from the
11 FDA presentation I gave? No.
12 Q. (BY MR. BLANK) That was the
13 videotaped recording?
14 A. Right.
15 Q. Are you aware whether the FDA
16 has found that any manufacturer of any opioid
17 has committed fraud on the FDA with respect
18 to its labeling?
19 A. Do you mean a labeling that
20 goes in the package?
21 Q. Correct.
22 A. No.
23 Q. Have you ever done any work for
24 the Federal Trade Commission?

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1 A. No.
2 Q. Do you know what unbranded
3 promotion is?
4 A. Yes.
5 Q. Do you know whether the Federal
6 Trade Commission regulates unbranded
7 promotion?
8 A. Do you mean of drugs?
9 Q. Yes.
10 A. Not that I can recall.
11 Q. Have you ever worked for or
12 consulted with the Federal Trade Commission?
13 A. No.
14 Q. Have you ever been employed by
15 a pharmaceutical company?
16 A. No.
17 Q. Have you ever consulted for a
18 pharmaceutical company?
19 A. Kind of, sort of.
20 Q. Who?
21 A. Confidential.
22 Q. You can tell me. We have a
23 protective order.
24 A. It doesn't matter. I don't

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1 want to disclose it.
2 Q. Why not?
3 A. Because it's confidential.
4 Q. We have a protective order that
5 governs this deposition.
6 A. Thank you. Great. I don't
7 want to disclose it.
8 Q. What was the nature of the work
9 that you did?
10 A. I don't want to discuss that
11 either.
12 Q. Was it related to prescription
13 drugs for pain?
14 A. No.
15 Q. Was it related to opioids at
16 all?
17 A. No.
18 Q. When was it?
19 A. Maybe five, six years ago.
20 Q. How long did you consult for?
21 A. Not long.
22 Q. How long?
23 A. I think two or three
24 conversations.

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1 Q. Did you get paid?
2 A. No.
3 Q. Did you choose to end the
4 consultancy?
5 A. I would say that it wasn't a
6 very formal consultancy, so.
7 There was an issue. We
8 discussed it. The issue was -- that was it.
9 Q. Are you familiar with DDMAC?
10 A. Yes.
11 Q. What is or was DDMAC?
12 A. The -- they're in charge of but
13 do not regulate in an effective manner
14 advertising of pharmaceuticals.
15 Q. It's your opinion that they do
16 not effectively regulate pharmaceutical
17 advertising; is that right?
18 MS. CONROY: Objection.
19 THE WITNESS: That's certainly
20 my opinion, yes.
21 Q. (BY MR. BLANK) Did DDMAC
22 change its name?
23 A. Well, the FDA changed its names
24 many times. I don't know all of the names of

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1 that organization.
2 Q. Okay. So do you know what the
3 new name is?
4 A. No.
5 Q. Have you heard of the Office of
6 Prescription Drug Promotion?
7 A. Yes.
8 Q. Have you ever worked for DDMAC
9 or OPDP?
10 A. No.
11 Q. Have you ever spoken to anybody
12 at DDMAC?
13 A. Yes.
14 Q. How many times?
15 A. That was what I discussed
16 yesterday during the deposition. I went to a
17 meeting --
18 Q. You don't need to repeat that.
19 Anything besides what you discussed
20 yesterday?
21 A. I think that's it.
22 Q. Have you reviewed any of
23 Purdue's submissions to the FDA regarding
24 pharmaceutical promotion?

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1 A. Yes.
2 Q. Which ones?
3 A. I can't recall specifically.
4 Q. Have you ever --
5 A. Certainly the approval label,
6 and a variety of -- I mean, I have it in my
7 report.
8 Q. Have you --
9 A. I have it in the report, the
10 FDA letter sanctioning Purdue's marketing, so
11 those examples. I've certainly reviewed
12 those.
13 Q. I was asking about Purdue's
14 submissions.
15 A. Well, those were submitted, I
16 think. And then later on, the FDA read them
17 and found them to be in violation of their
18 rules and regulations.
19 Q. Have you reviewed any other
20 manufacturer's submissions to the FDA
21 regarding pharmaceutical promotion?
22 A. Yes.
23 Q. Which defendants?
24 I'm sorry, which manufacturing

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1 defendants?
2 A. I think I've seen them for
3 Endo, Insys, probably several others.
4 Q. Have you done any research into
5 how DDMAC or OPDP reviews promotional
6 materials?
7 A. Yes.
8 Q. And what did your research
9 show?
10 A. That they don't review them.
11 They -- the advertising promotion materials
12 get sent to DDMAC, and DDMAC, you know,
13 doesn't send them -- and we read this and
14 then we okay it. They just filed it. And
15 then they occasionally review.
16 But as they see things, for
17 example, at that meeting I had that some of
18 the DDMAC people commented in effect they
19 were just watching TV, and they saw some ads
20 that they thought were wrong and that
21 triggered an investigation.
22 Q. Who was that?
23 A. I don't remember the name of
24 the people, but I'm not done with my answer.

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1 You interrupted my answer.
2 Do you want me to stop the
3 answer?
4 Q. No.
5 A. Okay. You just wanted to
6 interrupt the answer? No problem.
7 Sometimes I can't tell whether
8 you just want to interrupt or whether you
9 want to stop.
10 Q. I'll ask you to stop there and
11 your answer is incomplete because you're
12 taking way too long, and we don't have much
13 time for your 489 opinions in this case.
14 MS. CONROY: Objection. It was
15 a four-second stop.
16 Q. (BY MR. BLANK) Can you
17 describe the --
18 A. Was that a question?
19 Did you just ask me a question?
20 Q. I'm about to.
21 A. Oh, okay. You were just making
22 a gratuitous comment? Go right ahead.
23 Q. Can you just -- are you
24 familiar with the DDMAC review process of

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1 promotional materials?
2 A. Yes.
3 Q. Do you believe that they review
4 the promotional materials?
5 A. No. Generally not, maybe
6 occasionally. They may take maybe a small
7 sample, but they don't look at all the ones
8 that get submitted.
9 Q. Do you believe that they're
10 supposed to review the promotional materials?
11 MS. CONROY: Objection.
12 THE WITNESS: I don't think so.
13 I think they're -- they're authorized
14 to review them, but there's no
15 requirement in the law that they read
16 them all.
17 Q. (BY MR. BLANK) So do you know
18 for sure whether they're responsible for
19 reviewing promotional materials?
20 A. Sure, they're responsible for
21 reviewing them, but that's different from
22 saying that they review them all.
23 Q. Understood.
24 Have you ever reported any

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1 OxyContin promotional activities to the FDA
2 through the FDA Bad Ad Program?
3 A. No.
4 Q. Have you reported any other
5 opioid promotional activities to the FDA
6 through the FDA's Bad Ad Program?
7 A. No.
8 Q. Have you reviewed FDA guidance
9 on pharmaceutical promotion?
10 A. Yes.
11 Q. Which guidance?
12 A. Do you mean by document number?
13 Q. Yeah.
14 A. I don't recall.
15 Q. How about document type?
16 A. I'm not sure what you mean by
17 that.
18 Q. When did you last review such
19 guidance?
20 A. I don't know. Probably in the
21 last several months.
22 Q. Have you reviewed any FDA
23 guidance on unbranded promotional materials?
24 A. Yes.

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1 Q. Which ones?
2 A. I don't recall. That was
3 longer ago.
4 Q. Prior to your engagement in
5 this case?
6 A. Oh, yeah.
7 Q. What regulations apply to
8 promotion of prescription drugs?
9 A. Do you mean by Code of Federal
10 Regulations numbers?
11 Q. Correct.
12 A. I don't know.
13 Q. How about by name?
14 A. By name?
15 Q. Yeah.
16 A. I don't know what the current
17 name is of those regulations.
18 Q. Are you familiar with the
19 regulations that govern the distribution of
20 branded materials?
21 A. I've read them in the past,
22 yes.
23 Q. Okay. Yeah. Which -- which
24 regulations?

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1 A. I don't recall.
2 Q. You don't --
3 A. I don't recall the number or
4 the name.
5 Q. Are you familiar with the
6 regulations governing non-branded materials?
7 A. Same thing. I've read them.
8 Q. Can't --
9 A. I don't know the -- I don't
10 know the name or the number.
11 Q. Are you familiar with how the
12 FDA enforces those regulations?
13 A. Yes.
14 Q. How do they do it?
15 A. They generally don't do it.
16 Q. Pardon?
17 A. They generally don't do it.
18 Why don't we take a quick
19 break.
20 MR. BLANK: Okay.
21 THE VIDEOGRAPHER: Going off
22 the record at 10:21 a.m.
23 (Recess taken, 10:22 a.m. to
24 10:41 a.m.)

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1 THE VIDEOGRAPHER: We are back
2 on the record at 10:42.
3 Q. (BY MR. BLANK) Thank you.
4 Dr. Egilman, I want to go back to an area we
5 touched on earlier today, because one of the
6 questions I asked I got -- I may have been --
7 misunderstood your answer or you may have
8 misunderstood my question, so I want to ask
9 it again.
10 And it relates to the questions
11 that I asked you about whether you had had
12 any conversations with any prescribers in
13 Cuyahoga or Summit County, Ohio.
14 And the question that I would
15 like to ask you is whether you have ever
16 spoken with any prescribers -- strike that.
17 Whether you ever asked any
18 prescribers in Cuyahoga or Summit counties
19 whether they wrote any medically
20 unnecessary -- strike that.
21 Have you asked any prescribers
22 from Cuyahoga or Summit County, whether
23 they've relied on any marketing messages by
24 any of the defendants in this case in making

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1 prescription decisions?
2 A. No.
3 Q. Now, I looked at your CV, and
4 you did not go to law school; is that
5 correct?
6 A. I did not apply to law school.
7 I went -- I took two law school courses.
8 Q. Do you consider yourself a
9 legal expert?
10 A. Certain areas of the law, yes.
11 Q. Do you consider yourself a
12 legal expert in spoliation?
13 A. I know what it is.
14 Q. Do you know what the legal
15 elements of spoliation are?
16 A. It's different in different
17 states.
18 Q. What is it in Ohio?
19 A. That, I don't know.
20 Q. What is it in Massachusetts?
21 A. I do not know.
22 Q. What is it in Rhode Island?
23 A. I do not know.
24 Q. Do you know what it is in any

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1 state?
2 A. California.
3 Q. The legal elements of
4 spoliation?
5 A. I think so.
6 Q. What are they?
7 A. That's destroying documents
8 that should be preserved after you're on
9 notice that there may be a legal action.
10 Q. So the notice is an important
11 part of any claim of spoliation?
12 A. Well, in California, in some
13 places if you reasonably anticipate
14 litigation, whether or not there's been
15 specific notice or not, if you destroy
16 documents in anticipation of litigation, you
17 wouldn't need specific notice.
18 But, for example, a lawsuit
19 would be specific notice.
20 Q. And do you know whether you're
21 being offered as a legal expert in this case?
22 A. No.
23 Q. To your knowledge, are you
24 being offered as a legal expert in this case?

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1 A. No.
2 Q. In your report, Dr. Egilman,
3 you accuse Purdue of destroying documents;
4 correct?
5 A. Correct.
6 Q. And I noticed several opinions
7 in exhibits. Do you have access to those
8 exhibits?
9 A. Yes.
10 Q. Can I ask -- I don't have all
11 of the copies, but I know you have access.
12 MR. BLANK: Can we pull
13 Exhibits 88, 162, 278, and 466 and
14 hand them to Dr. Egilman, please?
15 Q. (BY MR. BLANK) While they're
16 doing that, Dr. Egilman, have you done any
17 forensic analysis to determine whether Purdue
18 has done any spoliation of evidence?
19 MS. CONROY: Objection.
20 THE WITNESS: No.
21 Q. (BY MR. BLANK) Have you done
22 any forensic analysis to determine whether
23 any defendant has spoliated evidence?
24 A. No.

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1 Q. Thank you very much.
2 Dr. Egilman, your assistant --
3 somebody -- has handed you some of the
4 exhibits I identified. The first one I'd
5 like you to look at is Exhibit B88.
6 A. I have it.
7 Q. Which is one of your opinions
8 titled "Purdue destroyed informational
9 materials." And it consists of two pages.
10 The first page is titled
11 "OxyContin granted promotional materials,"
12 and then it lists a whole bunch of materials.
13 And then the second page is an
14 e-mail or a memorandum to the entire sales
15 force from somebody named Jim Lang. And
16 you've underlined some language in that
17 memorandum; correct?
18 A. No.
19 Q. What was wrong about what I
20 said?
21 A. I didn't underline anything.
22 Q. Oh.
23 A. That's how the document
24 appears.

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1 Q. Thank you.
2 But the underlined language, is
3 that the basis for your opinion in B88 that
4 Purdue destroyed informational materials?
5 A. Well, the two documents
6 together.
7 Q. Do you think there's something
8 wrong about asking sales force to destroy
9 promotional materials that are outdated?
10 A. If they're not retained, yes,
11 for medical/legal reasons, where you can sue,
12 yes. Or anticipated litigation.
13 Q. Do you believe that -- is there
14 any evidence that you are aware of that
15 promotional materials for OxyContin were
16 destroyed?
17 Apart from this memorandum.
18 A. Well, I think I did some
19 searches for these documents on the first
20 page and couldn't find them in the
21 production.
22 Q. Do you think it's appropriate
23 practice when promotional materials become
24 outdated that they should be destroyed?

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1 A. No. That's not how I would do
2 it. Not how I think it should be done.
3 Q. Do you think there was a
4 sinister intent in destroying outdated
5 promotional materials in August of 2000?
6 A. I have no basis one way or the
7 other to comment on that.
8 Q. Would you take a look at
9 Exhibit 162?
10 A. Did you want to mark this or
11 not?
12 Q. No.
13 A. Okay.
14 Q. Exhibit 162 is from your
15 report, is an opinion titled "Purdue
16 destroyed documents." And it's a one-page
17 e-mail from a gentleman named Stephen Seid to
18 Russell Gasdia. And there's a red box around
19 one of the sentences.
20 Do you see that?
21 A. That's my box.
22 Q. You put the red box there?
23 Correct?
24 A. Correct.

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1 Q. And it appears that Steve has
2 asked -- sorry, Russ has asked Steve to help
3 him locate some information and Steve
4 replies, in this e-mail, which is Exhibit
5 B162, with the information in the first
6 paragraph. And then he says in the second
7 paragraph, "I burned all files on my way out
8 the door a la my predecessor. No. Should be
9 with the files I left."
10 "White pocket folder with
11 brochures, et cetera.
12 "If Sherl can't locate it, I
13 gave Peter Justison a copy."
14 Do you see that?
15 A. Mm-hmm. (Witness nods.)
16 Q. Okay. And do you think that
17 the author of this e-mail was serious when he
18 said that he burned all of his files on his
19 way out the door?
20 A. Do you mean is that what he
21 did? Burn them?
22 Q. Do you think he was serious
23 when he said that?
24 A. Yes. I don't think he burned

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1 them. And I wasn't referring to him in the
2 opinion. I was referring to "a la my
3 predecessor."
4 Q. Who was the predecessor?
5 A. I don't know.
6 Q. What documents was he talking
7 about?
8 A. I don't know.
9 He said all that, all files.
10 He says his predecessor destroyed all the
11 files.
12 Q. Can you turn to Exhibit 278.
13 A. Okay.
14 Q. This is your opinion 278?
15 A. Right.
16 Q. Titled -- well, it doesn't say
17 "Opinion" on the top of my page. Does it say
18 "Opinion" on the top of your page?
19 A. No.
20 Q. Is this an opinion of yours?
21 A. Yes.
22 Q. So it's an opinion, not a fact?
23 A. I think it's both.
24 Q. Okay. But it is your opinion?

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1 A. Yes.
2 Q. There was Purdue spoliation?
3 A. Yes.
4 Q. And this is an e-mail with some
5 red arrows on it; correct?
6 A. Correct.
7 Q. Are those your red arrows?
8 A. Yes.
9 Q. And what are you pointing to?
10 A. Subject line, "Billing drug
11 substance without training and
12 authorization."
13 Next sentence: "Although you
14 appear to be right, I don't know how many
15 times I have to tell you what is and is not
16 appropriate material for e-mail. Can't you
17 talk to people? No more e-mails on this
18 topic. And delete the ones you have right
19 now. Phil."
20 Q. And do you know whether the
21 recipient of this -- the recipients of this
22 e-mail actually deleted e-mails?
23 A. I looked for e-mails related to
24 this, and I couldn't find any.

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1 Q. And do you know what the
2 e-mails were pertaining to?
3 A. The manufacturing process.
4 Q. And have you done any analysis
5 of any of the hard drives of any Purdue
6 employees to determine whether documents were
7 permanently deleted?
8 A. No. I asked the plaintiffs to
9 get those hard drives, historically, since
10 1995, and they didn't get them.
11 Q. And is there any other
12 information produced in this litigation that
13 would lead you to conclude that documents
14 were destroyed?
15 A. Yes.
16 Q. What?
17 A. Well, I'm not sure if it was
18 produced in the litigation, but you see under
19 278, you have the self-destructing document
20 e-mail messaging system patented by
21 Purdue Pharma employees.
22 Q. Do you think that --
23 A. It seems like that would be a
24 system that would be set up to routinely

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1 destroy e-mails and documents.
2 Q. And do you believe there was
3 sinister intent in deleting e-mails?
4 A. Well, this patent is in 2007.
5 In 2007, this company had already pled guilty
6 to several crimes and been investigated and
7 been sued in civil litigation. So I think
8 there is an obligation for a company to
9 preserve e-mails after they've been sued and
10 after they've pled guilty to crimes.
11 Q. Well, you --
12 A. And so I would say that
13 planning a system to destroy documents would
14 not be good intent in that context.
15 Q. Have you ever destroyed a
16 document?
17 A. Sure.
18 Q. Have you ever deleted an
19 e-mail?
20 A. Sure.
21 Q. Have you broken the law by
22 doing so?
23 A. No.
24 Q. I want to go back to your --

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1 some of the questions we asked about your
2 experience in pain management.
3 Have you ever assessed a
4 patient for pain?
5 A. Yes.
6 Q. When was the last time?
7 A. This week.
8 Q. Who?
9 Never mind. Were they a -- I
10 don't want to know their name.
11 A. That's good. I'm not going to
12 give you that name.
13 Q. And how did you assess the
14 pain?
15 A. I discussed it with them.
16 Q. Are you familiar with the pain
17 scale?
18 A. Yes.
19 There are various pain scales,
20 but yes.
21 Q. Well, the 1 to 10?
22 A. Yes. There's also 1 to 4. The
23 Roth study was a 1 to 4.
24 Q. Have you treated patients with

Page 539

1 cancer-related pain?
2 A. Yes.
3 Q. When was the last time?
4 A. Sometime in the probably 2000,
5 2001 period.
6 Q. So roughly 18, 19 years ago?
7 A. Right. I probably supervised
8 patients who were treated for cancer pain
9 when I was in family medicine as well.
10 Q. Have you --
11 A. That would have been in the
12 last ten years -- last five to ten years.
13 Q. Have you treated patients with
14 chronic non-cancer pain?
15 A. Yes.
16 Q. Do you currently?
17 A. No.
18 Q. When was the last time?
19 A. Probably regularly when I was
20 at the clinic, 2001, 2002.
21 Q. So around 18 or 19 years ago?
22 A. Yes.
23 I supervised patients --
24 supervised patient care when I was in family

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1 medicine with chronic non-malignant pain
2 treatments. But that would have been in the
3 last three years.
4 Q. Have you treated patients for
5 any sort of addiction?
6 A. Yes.
7 Q. How many?
8 A. Hundreds. Probably thousands.
9 Certainly hundreds.
10 Q. Were any of those patients
11 addicted to opioids?
12 A. Some.
13 Q. How many?
14 A. Not many. Probably less than a
15 dozen.
16 Q. Sorry, less than a dozen?
17 A. Probably.
18 Q. And were those -- were those
19 dozen patients or so addicted to prescription
20 opioids?
21 A. Yes.
22 Q. All of them?
23 A. Yes.
24 Q. When was the last time you've

Page 541

1 treated such a patient?
2 A. 2001.
3 Aside from supervising some
4 similar patients in family medicine.
5 That's supervising the care of,
6 by supervising residents who were taking care
7 of similar patients.
8 Q. Earlier I think you testified
9 you had a patient who was addicted to
10 OxyContin; correct?
11 A. Correct.
12 Q. Is this the -- was there only
13 one? Or was there more than one?
14 A. I can only recall one, but
15 there may have been more. They were -- it
16 looks like from the IMS data, there may have
17 been two, but I can only recall one.
18 Q. And was that patient that you
19 can recall, was he or she taking OxyContin as
20 prescribed?
21 A. I don't know. I suspected not.
22 Q. Do you have any records
23 relating to that patient?
24 A. All the ones I have are the

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1 ones Purdue gave me.
2 Q. On the patient record?
3 A. On the IMS data that Purdue
4 illegally used in my deposition.
5 Q. And you don't have any
6 professional records of treating that
7 patient?
8 A. Correct.
9 Q. Destroyed?
10 A. I don't know. I don't work at
11 the -- I sold the clinic 2002, and I don't
12 know what happened to the records.
13 The records were part of the
14 sale.
15 Q. What is iatrogenic addiction?
16 A. Caused by medical care.
17 Q. What is the risk of iatrogenic
18 addiction resulting from prescription opioid
19 use?
20 A. There's no single answer to
21 that question.
22 Q. Can you quantify it?
23 A. Well, it's not quantifiable as
24 asked. There are a variety of situations and

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1 settings where doctors prescribing drugs can
2 result in addiction.
3 I can quantify it in different
4 settings. There's not good data for most --
5 there's no long -- there's no epidemiologic
6 studies that are of reasonable quality that
7 look at that question under any settings, but
8 there's a variety of reports -- mostly case
9 reports, sometimes clinical series -- that
10 look at that issue in various populations.
11 Q. Do you currently prescribe
12 opioids to any patients?
13 A. No.
14 Q. Have you ever prescribed
15 OxyContin?
16 A. Yes. In your IMS data that you
17 provided.
18 Q. And when was the last time?
19 A. Probably in that IMS data.
20 Q. From 2001?
21 A. Correct.
22 Q. Not since?
23 A. Not since.
24 And the 2002 data is not mine,

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1 just to be clear.
2 MR. BLANK: Dr. Egilman, my
3 colleague Jenna Newmark is going to
4 ask you some questions about your
5 specific opinions.
6 EXAMINATION
7 BY MS. NEWMARK:
8 Q. Hi, Dr. Egilman. I'm
9 Jenna Newmark from Dechert. I am Tim's
10 colleague on behalf of Purdue. I'm going to
11 ask you some questions about -- specifically
12 let's start with your report.
13 Can you please turn to page 53
14 of what's been marked as Exhibit 1F?
15 A. Okay.
16 Q. Okay. And it says at the top
17 there, "In 2004, I warned about the crisis; I
18 was ignored."
19 Did I read that correctly?
20 A. You did.
21 Q. Is that one of your opinions
22 that you intend to offer in this case?
23 A. Yes.
24 Well, it's -- excuse me. It's

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1 an opinion I have offered in this case.
2 Q. And you testified earlier that
3 these are opinions that you gave in prior
4 cases; right?
5 MS. CONROY: Objection.
6 THE WITNESS: Do you mean the
7 following pages? Yes.
8 Q. (BY MS. NEWMARK) Yes.
9 A. That go with No. 6? Yes.
10 Q. Would that be pages 53 to 61?
11 A. Right.
12 There's more too, but that's
13 what I put in here.
14 Q. What do you mean "There's
15 more"?
16 A. Well, I gave deposition
17 testimony. There were other reports. I
18 retyped this section of one of the early
19 reports and put it in as this opinion,
20 because there were other things that I told
21 Purdue during that case -- during the three
22 cases I consulted on with respect to their
23 marketing practices with respect to
24 OxyContin.

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1 Q. So what's on pages 53 to 61
2 were in prior words that you submitted in
3 prior cases involving Purdue; right?
4 A. Correct.
5 Q. Did those include the Taylor
6 and the Freund cases?
7 A. I can't remember the case
8 names.
9 Q. Okay. But they're from 2004;
10 right?
11 A. I think so.
12 Q. And these are all opinions that
13 you formed in or before 2004?
14 A. Yes.
15 Q. And these are the exact
16 opinions that you rendered in 2000 -- in or
17 around 2004?
18 MS. CONROY: Objection.
19 THE WITNESS: This is some of
20 the retyped version of the opinions
21 that I'd offered in 2004.
22 I mean, this document actually
23 is -- was produced by Purdue in the
24 production. In addition to this, I

<p style="text-align: right;">Page 547</p> <p>1 have PowerPoints that were produced in 2 production. My deposition, Purdue 3 produced in production. So all these 4 documents, and there are other reports 5 from other cases that Purdue produced 6 in production so they have them. 7 Q. (BY MS. NEWMARK) What 8 materials did you rely upon for the opinions 9 that appear on pages 53 to 61? 10 A. I think they're all -- all the 11 cites are in. 12 Q. So is it only what's in the 13 footnotes? 14 A. No, it's probably more. I 15 reviewed many, many more things. But I think 16 I have a cite here for more or less every 17 sentence. There may have been other 18 supporting documents that also supported 19 those facts that were the bases of my opinion 20 in 2004. 21 Q. And what do you mean by, quote, 22 in 2004, I warned about the crisis? 23 A. I mean, in 2000 -- 24 Do you want to know what I</p>	<p style="text-align: right;">Page 549</p> <p>1 otherwise allowed to answer -- 2 Q. Dr. Egilman, I just asked you a 3 question. "In 2004, I warned about the 4 crisis." What do you mean by that? 5 A. Okay. I mean that I told 6 Purdue Pharma the following facts and 7 opinions. 8 And the first paragraph, "The 9 drug was originally marketed for managing 10 severe pain; however, Purdue aggressively 11 marketed OxyContin through an advertising 12 campaign" -- 13 Q. Okay, Dr. Egilman, we have the 14 report in front of us, so I'm going to note 15 that your answer is incomplete. 16 Is it fair to say that -- 17 MS. CONROY: I object to the 18 way this questioning is going. Go 19 right ahead, but that's not the way 20 the Special Master intended 21 interruptions to take place. 22 Q. (BY MS. NEWMARK) What do you 23 mean by "crisis"? 24 A. I mean that there were -- well,</p>
<p style="text-align: right;">Page 548</p> <p>1 mean? 2 Q. Yes. 3 A. Okay. That's not a yes-or-no 4 question. You're aware of that? 5 Q. What do you mean by "In 2004, I 6 warned about the crisis"? 7 A. Okay. Do you want the short 8 answer or the long answer? 9 Q. I'd like you to please give me 10 an answer in accordance with Special Master 11 Cohen's directive yesterday. 12 MS. CONROY: Objection. Then 13 you better state what that directive 14 is, because I think we understand it, 15 but I'm not sure you do. 16 Q. (BY MS. NEWMARK) Dr. Egilman, 17 what do you mean by "In 2004, I warned about 18 the crisis"? 19 A. Okay. My understanding, given 20 your admonition of Special Master Cohen's 21 ruling, was that you can cut me off anytime 22 you want once I start answering a question. 23 So that's -- and that's how 24 I'll answer the question. But then I'm</p>	<p style="text-align: right;">Page 550</p> <p>1 yeah. This is what I mean by crisis. 2 So you've got OxyContin 3 prescriptions going up, and you have 4 concomitantly addiction going up, and deaths 5 going up. And that that started when 6 OxyContin's marketing entered. 7 In addition to that, you have 8 the generation of a variety of pill mills 9 that Purdue promoted and allowed to occur, 10 resulting in the dispersion of OxyContin 11 throughout the population with and without 12 prescriptions. 13 And that as a result of 14 Purdue's actions, OxyContin was overused by 15 the medical community and people got addicted 16 and died. And that that became a crisis 17 because the number of people who were 18 addicted and died increased dramatically once 19 Purdue began its marketing campaign. 20 Q. And, Dr. Egilman, you just 21 pulled out a chart. May I see the chart, 22 please? 23 Is this a chart that you 24 created?</p>

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1 A. No.
2 Q. Is this a chart that you showed
3 Purdue in 2004?
4 A. No.
5 Q. All of these opinions on page
6 53 to 61 which you've testified were opinions
7 that you rendered in 2004, did you give those
8 opinions to the FDA?
9 A. No. I was not allowed. There
10 was a confidentiality order in the case.
11 Q. Did you give those opinions to
12 the DEA?
13 A. Same answer. I was not
14 allowed. There was a confidentiality order
15 in the case. And I had already gotten in
16 trouble for releasing documents under a
17 confidentiality order at the time I came in
18 possession of these documents.
19 Q. In 2004, did you have concerns
20 about opioid prescribing generally?
21 A. Yes.
22 Q. Apart from things that you
23 learned over the course of the cases that you
24 worked on?

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1 A. Yes.
2 Q. And did you describe those
3 concerns apart from the cases that you worked
4 on to the FDA?
5 A. No. Those concerns were based
6 on publicly available information.
7 Q. Did you tell the FDA at all
8 that you were concerned based on the publicly
9 available information?
10 A. Not -- no.
11 Q. So you only expressed those
12 concerns when you were retained by
13 plaintiffs' counsel; correct?
14 A. No.
15 MS. CONROY: Objection.
16 THE WITNESS: I only expressed
17 those concerns when I got the
18 documents that indicated how Purdue
19 was illegally marketing and promoting
20 the use of its drugs and causing
21 overuse of those drugs.
22 Q. (BY MS. NEWMARK) Let's look at
23 paragraph 1 on page 53. The fifth line down
24 begins a sentence almost toward -- after the

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1 bolded part, reading "However, Purdue Pharma
2 aggressively marketed OxyContin through an
3 advertising campaign that misled health
4 providers and the public about the dangers of
5 OxyContin."
6 Did I read that right?
7 A. You did.
8 Q. And when you say "Purdue Pharma
9 aggressively marketed OxyContin," what do you
10 mean by "aggressive"?
11 A. Well, I think that probably a
12 lot of that is in the next five or six pages
13 here, but some things may not have been
14 included here.
15 They had a very large sales
16 force. They encouraged the sales force to
17 tell physicians that the addiction rates were
18 low, less than 1%. They encouraged the sales
19 force to use the drug for chronic
20 non-malignant pain which was not an
21 indication in the label.
22 They encouraged the sales force
23 to increase the dosing so that profits would
24 increase. So they wanted it as a specific

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1 program to get people to switch to
2 80 milligrams.
3 They aggressively misled the
4 physician community about Q12 dosing. And
5 that Q12 dosing by itself was an
6 addiction-generating machine.
7 So those are -- those are some
8 of the things that they did that were
9 aggressive.
10 They also off-label marketed.
11 They were cited for some of that off-label
12 marketing by the FDA, and then pled guilty
13 to -- well, actually, the non-functioning
14 entity subsidiary pled guilty to criminal
15 conduct for the acts of the parents, and that
16 the pleadings indicated a variety of other
17 specific aggressive marketing techniques that
18 were used to mislead information and
19 encourage prescribing.
20 They were aware of pill mills,
21 and they didn't do anything to stop pill
22 mills from prescribing. They didn't have any
23 suspicious order monitoring program.
24 For example, when Seid found

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1 that ordering increased dramatically, he
 2 would review --
 3 Q. Dr. Egilman, I asked you how
 4 you defined aggressive. So I move to strike
 5 everything from 88:15 on.
 6 And I'll note that your answer
 7 is incomplete.
 8 How do you define "aggressive"?
 9 A. In this case I defined it by
 10 the acts that I just started to try to
 11 describe.
 12 Q. And you talked earlier about
 13 the size of Purdue's sales force. How big
 14 was Purdue's sales force at the launch of
 15 OxyContin?
 16 A. I think I've got a sales force
 17 overtime document on that that I've seen. I
 18 think probably 2 or 300 at the beginning,
 19 something like that.
 20 Q. Have you ever done any analysis
 21 of Purdue's sales force as compared to the
 22 sales forces of other manufacturers of
 23 Schedule II narcotics at around the same time
 24 period?

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1 A. No.
 2 Q. Have you ever done any analysis
 3 comparing sales practices of OxyContin to
 4 sales practices and marketing practices of
 5 manufacturers of other opioids at around the
 6 same time period?
 7 A. Yes.
 8 Q. And what analysis was that?
 9 A. Well, I reviewed the sales
 10 practices of a lot of the other companies
 11 involved in litigation.
 12 For example, Roxane, which had
 13 a similar drug, kind of approved in 1998 but
 14 not sold, and then approved again and sold in
 15 2000, 2001. And they didn't have, as I
 16 recall, a very aggressive marketing program.
 17 They didn't have any advertisements in JAMA
 18 that were illegal, for example, or in any
 19 other medical magazines I can recall.
 20 The only narcotic
 21 advertisements that I can recall seeing
 22 during that time period were Purdue Pharma
 23 advertising in journals. I don't recall any
 24 other pharmaceutical company with opioid

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1 marketing programs in the general medical
 2 journals that I subscribed to.
 3 Q. Have you done any quantitative
 4 analysis comparing the sales practices,
 5 including the size of the sales force of
 6 Purdue, for OxyContin at the launch of
 7 OxyContin to other manufacturers of
 8 Schedule II narcotics at around the same
 9 time?
 10 A. No, but that's difficult to do
 11 because Purdue is relatively unique in
 12 that --
 13 Q. Dr. Egilman, I asked you a
 14 yes-or-no question, and you answered no. So
 15 we'll move on.
 16 MS. CONROY: Objection.
 17 THE WITNESS: Great. Just note
 18 that my answer was incomplete.
 19 MS. NEWMARK: I'll note that
 20 your answer was incomplete.
 21 Q. (BY MS. NEWMARK) You also
 22 referred to, on page 53, paragraph 1, a
 23 marketing piece that Purdue developed called
 24 "Myths About Opioids"; correct?

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1 A. Correct.
 2 Q. And you criticized that piece,
 3 "Myths About Opioids"; correct?
 4 A. Yes.
 5 Q. And in general, I'm going to
 6 sum, in the interest of time, you think that
 7 it was misleading; correct?
 8 A. I certainly agree that it was
 9 misleading, among other things.
 10 (Whereupon, Deposition Exhibit
 11 Egilman 32, Transmittal of
 12 Advertisements and Promotional
 13 Labeling for Drugs and Biologics for
 14 Human Use, PPLP000665729-665769, was
 15 marked for identification.)
 16 Q. (BY MS. NEWMARK) I've marked
 17 as Exhibit 32, a document which the court
 18 reporter is going to show you now. Have you
 19 ever seen this document before?
 20 MS. CONROY: Do you have a copy
 21 for me?
 22 MS. NEWMARK: I do.
 23 THE WITNESS: This is the --
 24 Q. (BY MS. NEWMARK) Have you ever

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1 seen this document before?

2 A. I don't know. I'm trying to --

3 I think so, yes.

4 Q. Do you know what it is?

5 A. It's the submission of the ad

6 to the FDA under the regulations where you

7 have to submit ads to the FDA.

8 Q. And is this a -- and that's

9 pursuant to Section 2253; right?

10 A. Correct.

11 Q. And is this a submission for

12 the "Myths About Opioids" brochure to the FDA

13 pursuant to 2253?

14 A. It is.

15 Q. So through the 2253 process,

16 the FDA is to review these submissions;

17 correct?

18 MS. CONROY: Objection.

19 THE WITNESS: No.

20 Q. (BY MS. NEWMARK) What is your

21 understanding of the 2253 process?

22 A. The companies have to submit

23 them to the FDA. The FDA looks at a

24 teeny-weeny portion of them, and evaluates

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1 them.

2 Generally they only evaluate

3 for critical review advertisements where one

4 company squeals on another company and

5 complains about its illegal marketing based

6 on the -- based on the marketing campaign

7 that results.

8 Q. Has the FDA ever issued any

9 sort of official statement saying that it

10 only reviews a small portion, or in your

11 words a teeny-weeny portion, of the 2253

12 submissions it receives?

13 A. I think Gottlieb said something

14 like that in a public statement when he was

15 talking about opioids.

16 That's all I can recall from

17 the FDA per se.

18 Q. And that wasn't in -- that

19 wasn't in 1996, was it?

20 A. No.

21 Q. And so at the time that Purdue

22 submitted the 2253 form that you have before

23 you to the FDA, would you agree that it would

24 have been reasonable for Purdue to expect the

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1 FDA to review this document?

2 A. No.

3 MS. CONROY: Objection.

4 THE WITNESS: Everybody in the

5 business knows the FDA doesn't look at

6 them. It doesn't have the staff to

7 look at them. In 2004, they had six

8 people to do all the reviews of 30 to

9 50,000 submissions.

10 Q. (BY MS. NEWMARK) Well, you

11 don't know what the expectation was of Purdue

12 or any pharmaceutical company with respect to

13 what the FDA would or wouldn't do; right?

14 A. That's not true.

15 Q. Are you aware that the FDA can

16 tell a pharmaceutical company not to use

17 certain marketing materials if the FDA

18 believes those marketing materials are

19 misleading?

20 A. Yes.

21 Q. And did the FDA do so with the

22 "Myths About Opioids" brochure that's

23 attached to the 2253 form here?

24 A. No.

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1 Q. Let's move on to paragraph

2 of -- on page 53 of Exhibit 1F.

3 You state in this paragraph

4 that you reviewed the Physicians' Desk

5 Reference; correct?

6 A. Correct.

7 Q. And that was for OxyContin?

8 A. Correct.

9 Q. What's a Physicians' Desk

10 Reference?

11 A. It's a compilation of

12 FDA-approved labels that are mailed to all

13 practicing physicians in the country for

14 free.

15 But in order to get into the

16 PDR, the company has to pay for the space.

17 So it doesn't include all labels.

18 Q. And in paragraph 3 you said

19 that you reviewed the product labeling for

20 OxyContin from 1999 to 2001; right?

21 A. Correct.

22 Q. Why did you review the labeling

23 only from 1999 to 2001?

24 MS. CONROY: Objection.

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1 THE WITNESS: Because that's
2 when I started to consider using the
3 drug.
4 Q. (BY MS. NEWMARK) Have you ever
5 seen the initial label for OxyContin?
6 A. In 1996? Yes.
7 Q. Have you reviewed that label in
8 detail?
9 A. Yes.
10 MS. NEWMARK: I'm going to mark
11 as Exhibit 33.
12 (Whereupon, Deposition Exhibit
13 Egilman 33, OTHER/OxyContin Tablets
14 NDA #20-553, PDD1501603661-1501603669,
15 was marked for identification.)
16 Q. (BY MS. NEWMARK) Dr. Egilman,
17 do you recognize this document that's been
18 marked as Exhibit 33?
19 A. Yes.
20 Q. And what is it?
21 A. It's the initial approved
22 label --
23 Q. And you --
24 A. -- for OxyContin.

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1 Q. And you said that you've
2 reviewed this before; right?
3 A. Correct.
4 Q. Are you aware that the FDA must
5 approve all labels for prescription drugs?
6 A. It's a negotiated process and
7 final approval has to be done by the FDA.
8 Q. And the negotiated process can
9 sometimes take a long time; right?
10 A. Yes.
11 Q. Do you know why the process
12 takes a long time?
13 A. Yes.
14 Q. Why is that?
15 A. Because generally the companies
16 want language that's favorable to them that
17 minimizes side effects and enhances benefits,
18 and the FDA doesn't agree and they have a
19 struggle about that. The company wants to be
20 able to use a label as favorable to them as
21 possible with respect to how much money they
22 can make using the label to sell the
23 products.
24 Q. And you testified yesterday

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1 that someone needs a prescription from a
2 doctor to obtain prescription opioids;
3 correct?
4 Legally; correct?
5 A. Legally, correct.
6 Q. And would you agree that the
7 doctor serves as the learned intermediary, to
8 use a legal term, between the drug company
9 and the patient receiving the pharmaceutical?
10 MS. CONROY: Objection.
11 THE WITNESS: No. Not in these
12 cases.
13 Q. (BY MS. NEWMARK) In general,
14 do you agree --
15 MS. CONROY: Objection.
16 Q. (BY MS. NEWMARK) -- that the
17 doctor serves as the person who's supposed to
18 use their judgment to decide whether a drug
19 is beneficial for the patient receiving it?
20 MS. CONROY: Objection.
21 THE WITNESS: I wouldn't put it
22 exactly that way, no.
23 Q. (BY MS. NEWMARK) For any drug,
24 would you agree that a doctor is supposed to

Page 566

1 know what is in the label for any drug that
2 they're prescribing?
3 A. Can't happen. It's not
4 possible. Not -- it's not possible. It may
5 be a supposed to, but it's not possible.
6 Q. Well, when you -- strike that.
7 You said that you've treated
8 patients in the past; right?
9 A. Yes.
10 Q. And you've prescribed them
11 drugs; right?
12 A. Yes.
13 Q. And for the drugs that you
14 prescribed, did you know what was in the
15 label for those drugs?
16 A. For -- in a general way? Yes.
17 Did I --
18 These labels are usually 6-type
19 print and, you know, 15 to 20 pages. So I
20 wouldn't know everything that was in them.
21 When I was writing the prescription, I would
22 generally refer, first, look at the black
23 box. Then you look at the dose. Then you
24 look at the indication. And you look at the

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1 major -- the contraindications, warnings.
2 You certainly generally
3 wouldn't look at the long list that used to
4 be in the label of adverse events reported
5 during the studies. Most people ignore that
6 section. It's appropriate, probably, to
7 ignore that section.
8 So, you know, you look at some
9 parts of the label.
10 You know, it takes you more
11 than 15 minutes to read this label. Maybe
12 more than a half an hour to read it. And
13 actually, probably take more than a half an
14 hour to read this label. Most physicians
15 have 10 to 15 minutes per patient. Some
16 patients may get -- most patients get more
17 than one drug. So you don't spend three
18 hours with each patient reviewing the label
19 every time you give them a drug.
20 Q. But you were saying you
21 don't -- just because you don't review the
22 full label doesn't mean doctors shouldn't
23 review the full label; right?
24 A. I don't know any physician who

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1 I've ever spoken to who's has read the full
2 label on every drug they've -- on any drug
3 they've written when they write the drug.
4 And you've got to remember, unless you do
5 that, you're not necessarily reading the
6 right label because these labels can change
7 during the year.
8 So if I'm reading a PDR from
9 this year, there may have been an update sent
10 by mail for one or more of the drugs in there
11 that I may be using. There's no way to fit
12 that in.
13 If it's not a drug I use often,
14 I'm not going to read it, if it's a drug that
15 I may use that drug during the year. So
16 that's what the real practice of medicine is.
17 Q. Have you taken any surveys of
18 any doctors in Cuyahoga or Summit County and
19 asked them how much of a label they review?
20 A. No.
21 Q. Let's turn back to Exhibit 1F.
22 Let's turn to pages 53 and 54.
23 Starting on page -- on page 53,
24 paragraph 3, and then continuing on to 54,

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1 you list a number of omissions and
2 misrepresentations that you think that Purdue
3 either omitted from or misrepresented from
4 the label; right?
5 A. Correct.
6 Q. And what's the basis for your
7 opinion -- strike that.
8 Let's start with the omissions,
9 towards the top of page 54.
10 A. I'm there.
11 Q. You list four omissions, A, B,
12 C, and D; right?
13 A. Correct.
14 Q. What is the basis for your
15 opinion that A, B, C, and D should have been
16 included in the label for OxyContin?
17 A. Prior drug addiction is a --
18 should be listed as a contraindication. I
19 think there's literature that shows a prior
20 drug addiction is a contraindication to the
21 use of opioids.
22 And so that's my basis for
23 that. I don't think that's very
24 controversial.

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1 Second one --
2 Did you just ask for the first
3 one?
4 Q. Well, we --
5 A. I mean --
6 Q. Let's do --
7 A. Oh, you asked for all four. So
8 do you want to go to the next one now?
9 Q. Let's -- I'll take your answer
10 for A.
11 Let's go to B, "Purdue failed
12 to include the risk of addiction in the
13 label's warning or precautions section."
14 Did I read that right?
15 A. You did.
16 Q. Let's turn back to the 1996
17 label for OxyContin that I showed you as
18 Exhibit 33.
19 A. Okay.
20 Q. And if you turn to the third
21 page, PDD1501603663. When you flip the page,
22 it will be facing you.
23 A. Got it.
24 Q. And can you please read to me

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1 what it says, third line down from the very
2 top?
3 A. "Cmax the extent of absorption
4 AUC. See table 1 below"?
5 Q. From the very, very top.
6 Sorry.
7 Starting underneath the line.
8 Then there's three lines of text?
9 A. Oh, okay. It says "OxyContin
10 10 milligrams, 20 milligrams, 40 milligrams.
11 Oxycodone hydrochloride controlled release.
12 Warning: May be habit-forming."
13 Q. But you think there's no risk
14 of addiction in the label itself that should
15 have been in there?
16 A. Right. I mean, "Warning: May
17 be habit-forming" goes with bubble gum. I
18 have a big tub of bubble gum in my office,
19 it's habit-forming. It's not addicting, but
20 it's habit-forming. A habit is not an
21 addiction.
22 Q. But that's your opinion?
23 A. That a habit is not an
24 addiction? I agree. I have a habit of

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1 getting up in the morning and exercising.
2 I'm not addicted to it, unfortunately.
3 Q. Let's --
4 A. I have a lot of other bad
5 habits too. Probably we can leave that one
6 as an opinion not finished.
7 Q. Let's turn to page
8 PDD1501603667.
9 A. 667?
10 Q. Yes.
11 A. Okeydokey.
12 Q. Let's go to the middle of the
13 page where it says "Drug abuse and
14 dependence."
15 A. Right.
16 Q. What does it say in
17 parentheses?
18 A. "Addiction."
19 Q. And then can you please read
20 the first sentence?
21 A. "OxyContin is a mu agonist
22 opioid with an abuse liability similar to
23 morphine and is a Schedule II controlled
24 substance."

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1 Q. What's a Schedule II controlled
2 substance?
3 A. It's a narcotic that's labeled
4 Schedule II which means it has specific
5 requirements for distribution from a
6 manufacturer's standpoint. It's got to be
7 locked vaults, et cetera. And at the
8 patient-physician level, usually there's a --
9 you have to do a specific -- now you'd have
10 limitations on how many pills you can give
11 and triple prescription writing and things
12 like that.
13 Q. And --
14 A. But that wasn't true when I was
15 practicing necessarily. So in the initial
16 time when I was practicing, you could write a
17 Schedule II on a regular prescription. But
18 that's because I'm an old person.
19 Q. Is it one of the features of a
20 Schedule II drug that it does have abuse
21 potential?
22 A. Sure.
23 Q. And what you just read, the
24 sentence underneath "Drug abuse and

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1 dependence," isn't that a warning relating to
2 addiction?
3 A. Doesn't say warning.
4 Q. Does it have to say warning to
5 be a warning?
6 A. It's awful helpful to say
7 warning when it's a warning. And it's also
8 substantively wrong. It's misleading on its
9 face.
10 And intentionally misleading on
11 its face.
12 Q. Dr. Egilman, I'm going to move
13 to strike that entire answer. I asked you a
14 yes-or-no question.
15 Does it have to say warning to
16 be a warning?
17 A. What's "it" refer to?
18 Q. Does what we read -- just read
19 in the label have to be -- have to say
20 warning to be a warning?
21 A. Yes, a warning has -- is
22 specific language in the context of an FDA
23 label. It has a specific meaning, and it
24 must be there to -- for that purpose. It's a

<p style="text-align: right;">Page 575</p> <p>1 specific requirement to put a warning in. 2 It's a negotiated process, and it has to be 3 there. 4 In this context, in order to be 5 a warning, it must start with the word 6 "warning." 7 Q. You -- on page 54, paragraph 3, 8 Section D, you also state "Purdue failed to 9 list any of the symptoms of opioid 10 withdrawal." 11 Did I read that right? 12 A. Right. 13 Q. Let's turn to page -- and I'll 14 shorten it -- 3665 in Exhibit 33. 15 A. Okay. 16 Q. Can you please read for me 17 the -- starting from the very, very bottom of 18 the second column. Starting at "Physical 19 dependence." 20 A. "Tolerance and physical 21 dependence"? 22 Q. And please read for me the 23 second-to-last line in that column for the 24 record.</p>	<p style="text-align: right;">Page 577</p> <p>1 discontinue a drug or may be prescribed 2 through the administration of drugs with 3 opioid antagonist activity, open parenthesis, 4 see overdosage, all caps, closed parenthesis, 5 period." 6 Q. Please keep reading. 7 A. "If OxyContin is abruptly 8 discontinued in a physically dependent 9 patient, an abstinence syndrome may occur. 10 This is characterized by some or all of the 11 following: Restlessness, lacrimation, 12 rhinorrhea, yawning, respiration [sic], 13 chills, myalgia and mydriasis." 14 Q. Okay. 15 A. "Other symptoms may also 16 develop including: Irritability, anxiety, 17 backache, joint pain, weakness, abdominal 18 cramps, insomnia, nausea, anorexia, vomiting, 19 diarrhea, or increased blood pressure, 20 respiratory rate, or heart rate. If signs 21 and symptoms of withdrawal occur, patients 22 should be treated by reinstitution of opioid 23 therapy followed by a gradual tapered dose 24 reduction of OxyContin combined with</p>
<p style="text-align: right;">Page 576</p> <p>1 A. "Tolerance to the analgesic 2 effect of opioid" -- 3 Q. The -- the second-to-last 4 sentence in that column at the bottom. 5 A. I was reading the -- I was 6 reading second-to-the-last sentence. 7 Q. Starting -- 8 A. The last sentence starts 9 "Physical dependence." 10 Q. I'm sorry, "Physical 11 dependence," the second-to-the-last line? 12 A. I was reading -- the 13 second-to-the-last line starts with 14 "Tolerance." 15 Q. Beneath that. 16 A. That's the last line. 17 Q. The last line. "Physical 18 dependence." 19 A. Okay. "Physical dependence 20 results" -- remember, I was challenged on my 21 English reading ability. 22 Q. Okay. 23 A. "Physical dependence results in 24 withdrawal symptoms in patients who abruptly</p>	<p style="text-align: right;">Page 578</p> <p>1 symptomatic support, open parenthesis, see 2 dosage administration in all caps, cessation 3 of therapy, closed parenthesis." 4 Q. Okay. Dr. Egilman, what you 5 just read there, aren't those signs and 6 symptoms of withdrawal? 7 A. They are. 8 Q. And yet on page 54, under 9 omissions D, you say failed -- "Purdue failed 10 to list any of the symptoms of opioid 11 withdrawal"; right? 12 A. Correct. 13 Q. So is that statement D wrong? 14 A. Yes. 15 She went to Brown. Very good. 16 She didn't take my course. She would have 17 been better. 18 Q. Move to strike that. 19 Part of that. The second part. 20 Okay. On page 54, you also 21 list in the middle of the page -- at page 54 22 of Exhibit 1, you also list in the middle of 23 the page "Misrepresentations"; right? 24 A. I do.</p>

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1 Q. And to -- in the interest of
2 time I'm just going to paraphrase. One of
3 the misrepresentations you claim are in the
4 label relate to delayed absorption; right?
5 MS. CONROY: Objection.
6 THE WITNESS: Correct.
7 Q. (BY MS. NEWMARK) And the --
8 specifically the line "Delayed absorption as
9 provided by OxyContin tablets is believed to
10 reduce the abuse liability of the drug";
11 right?
12 A. In combination with the
13 previous question, yes.
14 Q. This -- this is what -- I'm
15 going to refer to that line as delayed
16 absorption language; is that okay?
17 A. Sure.
18 Q. This delayed absorption
19 language within the label, right?
20 A. It's a quote from the label,
21 and it's cited from the label.
22 Q. Are you aware that this label
23 was fully considered and vetted by the FDA?
24 MS. CONROY: Objection.

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1 THE WITNESS: No.
2 Q. (BY MS. NEWMARK) Have you
3 reviewed the package insert submission to the
4 FDA from 1994?
5 A. Yes.
6 Q. And are you aware that there
7 was correspondence between Purdue and the FDA
8 on the delayed absorption language?
9 A. Yes.
10 Q. And ultimately this was the
11 language that the FDA approved; correct?
12 A. They allowed it to go on the
13 label, right.
14 Q. Do you disagree with the FDA's
15 approval of this language?
16 A. Yes.
17 Q. And let's look at exhibit --
18 the exhibit to your report B462.
19 And I can show you my copy.
20 Dr. Egilman, is that your
21 version of Exhibit 462?
22 A. Yes.
23 Q. And do you have notes on that
24 version?

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1 A. I do.
2 Q. And what are those notes?
3 A. Do you want me to read them?
4 Q. Yes, please.
5 A. Dash MS Contin, dash Roxane,
6 dash 160-milligram dose, dash EERW, dash
7 Action, dash Impact, and more.
8 Q. What is Exhibit B462?
9 A. Do you mean do you want me to
10 read the title?
11 Q. Sure.
12 A. "Opinion. This is the timeline
13 of FDA activity that FDA created of its
14 activities related to opioid addiction. It
15 omits regulatory capture." And all those
16 other things I put down in notes.
17 Q. Can you please turn to page 2
18 of 38 of Exhibit B462?
19 A. Sure.
20 Q. And this is a document that you
21 pulled from the website listed here; right?
22 A. I think so.
23 Q. On the first page?
24 Okay. So this is on the FDA's

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1 website; right?
2 A. That's my understanding.
3 Q. Can you --
4 A. It was when I pulled it off.
5 Q. I'm going to represent to you
6 that this is still on the FDA's website
7 today. Or as of when I last checked last
8 week. Okay?
9 A. No problem. I wasn't
10 challenging that. I'm just trying to answer
11 the questions.
12 Q. Okay. Can you please read, on
13 page 2 of 38, towards the bottom. There are
14 two bullet points. Can you please read the
15 first bullet point, the first sentence of the
16 first bullet point?
17 A. "At the time of approval, FDA
18 believed the controlled release formulation
19 of OxyContin would result in less abuse
20 potential since the drug would be absorbed
21 slowly and therefore would not be an
22 immediate, open quote, rush, closed quote, or
23 a high that would promote abuse."
24 Q. And this is on the FDA's

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1 website; right?
2 A. Correct.
3 Q. And you disagree with what the
4 FDA has as -- currently has on its website?
5 A. Do you want to limit that to
6 this paragraph and that sentence? They have
7 a lot of things on their website. It's a
8 very large website.
9 Q. I'll re-ask the question.
10 You said earlier that you
11 disagree with the FDA's decision to approve
12 the controlled release formulation part of
13 the label; right?
14 A. Yes.
15 Q. And here, the FDA talks about
16 how it believed the controlled release
17 formulation would result in less abuse
18 potential; right?
19 A. That's what they say they
20 believed.
21 Q. Do you have any reason to
22 disagree with that?
23 A. Yes.
24 Q. But the FDA still has this on

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1 its website?
2 A. Yes.
3 Q. Have you ever told the FDA that
4 you disagree with what's on its website?
5 A. Not with what is on its
6 website, but this specific item, yes.
7 Q. And when did you tell the FDA
8 that you disagreed with that specific item?
9 A. In 2013 when I gave that
10 presentation at the FDA hearing on opioids.
11 Q. Are you referring to the
12 testimony before the FDA Center for Drug
13 Evaluation and Research in 2013?
14 A. Yeah. It's only one testimony
15 made in that year, so if that's --
16 I don't remember what the name
17 of the committee was, but yeah.
18 Q. And was that titled "Impact of
19 approved drug labeling on chronic opioid
20 therapy"?
21 A. Do you mean if that was the
22 title of the hearing? Yes. I believe.
23 Something like that. It was on
24 labeling.

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1 Q. And did the FDA take any action
2 with respect to the -- with respect to your
3 concerns about that part of the label after
4 you testified before the FDA?
5 A. Nope.
6 Q. Let's turn to page 58 of
7 Exhibit 1F. And look at paragraphs 13 and
8 14.
9 A. Okay.
10 Q. And I'm going to paraphrase
11 here and you can tell me if I'm wrong. I'm
12 just trying to save some time for my
13 colleagues down the table.
14 These paragraphs relate to your
15 disagreement with the use of OxyContin for
16 Q12-hour dosing; right?
17 MS. CONROY: Objection.
18 THE WITNESS: Paragraphs 13 and
19 which one? 13 and 14?
20 Q. (BY MS. NEWMARK) 13 and 14.
21 A. Correct.
22 Q. Are you aware that the FDA
23 approved OxyContin for Q12-hour dosing?
24 A. Yes.

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1 Q. And let's turn to Exhibit 33,
2 the page ending in 3668.
3 A. Okay.
4 Q. The first paragraph -- the
5 first full paragraph on the left column, can
6 you please read the second sentence?
7 A. The controlled release nature
8 of the formulation allows it to be
9 effectively administered every 12 hours.
10 Open parenthesis, see clinical pharmacology,
11 semicolon, pharmacokinetics and metabolism,
12 period, closed parenthesis.
13 Q. And this is in the labeling
14 that was approved by the FDA; right?
15 A. Yes.
16 Q. Do you disagree with that
17 language?
18 A. Yes.
19 Q. I'm going to hand you what's
20 going to be marked as Exhibit 34.
21 (Whereupon, Deposition Exhibit
22 Egilman 34, 3-8-96 letter to Diane
23 Shnitzler with attachments,
24 PPLP000614833-614856, and Opinion-This

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1 is the timeline of FDA activity
2 related to opioid addiction-it omits
3 regulatory capture, was marked for
4 identification.)
5 Q. (BY MS. NEWMARK) Dr. Egilman,
6 have you ever seen this document before?
7 A. The approval letter?
8 Q. Exhibit 34?
9 A. Oh, this one? Oh. Hang on a
10 second.
11 I've seen the ad before. I
12 don't think I've seen the cover letter.
13 Q. And it's from Lee Ann Storey at
14 the Purdue Frederick Company, and addressed
15 to Diane Shnitzler at the Division of Drug
16 Marketing Advertising and Communications,
17 Food and Drug Administration; right?
18 A. Correct. It's on Purdue Pharma
19 stationery.
20 Q. What's the date on this
21 document?
22 A. March 8, 1996.
23 Q. And if I represent to you that
24 this was promotional material submitted to

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1 the FDA at the time OxyContin was launched,
2 would you have any reason to disagree with
3 me?
4 A. No.
5 Q. Are you aware that the FDA has
6 to approve promotional materials for a drug
7 when the drug is launched?
8 A. The FDA has to -- promotional
9 materials --
10 The answer is no. They don't
11 do that.
12 There's no approval -- there's
13 no letter coming back from the FDA saying "We
14 approve your promotional materials" that I've
15 seen.
16 Q. You would agree that this
17 promotional material was sent to the FDA;
18 right?
19 A. I have no reason to dispute
20 that this is the letter that was sent to the
21 FDA.
22 Q. Can you please turn to the page
23 ending in one -- the page PPLP000614836.
24 A. Okay.

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1 Q. And do you see where it says
2 "The analgesic efficacy"?
3 A. I do.
4 Q. Can you please read that
5 sentence, that line and the line below it for
6 the record?
7 A. "The analgesic efficacy of
8 immediate release oxycodone, the ease of Q12
9 dosing. 12 hours of smooth and reliable pain
10 control. Less frequent dosing than Percocet,
11 Vicodin, or Tylenol with codeine."
12 Q. Are you -- withdrawn.
13 You testified earlier that you
14 know the FDA can tell a company not to -- not
15 to use certain marketing materials if they
16 believe them to be false or misleading;
17 right?
18 A. They can do that.
19 Q. And the FDA certainly could
20 have done that here; right?
21 A. They could have done that.
22 Q. Especially if it found the
23 Q12-hour dosing language misleading; right?
24 A. They could have done that, if

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1 they --
2 Q. Did they --
3 A. If they read it, they could
4 have done that.
5 Q. Did they tell Purdue not to use
6 these promotional materials here?
7 A. They gave no comment on this
8 submission. They did not write a letter
9 saying this is okay, and they did not write a
10 letter saying this is not okay.
11 Q. So the FDA never told Purdue
12 not to use these promotional materials?
13 A. They never told them it was
14 okay, and they never told them it wasn't.
15 Q. You've made your opinions about
16 12-hour dosing known to the FDA; right?
17 A. I did.
18 Q. And that was during the 2013
19 testimony before the Center for Drug
20 Evaluation and Research?
21 A. Correct. It was delayed six
22 years.
23 Q. Did the FDA instruct Purdue to
24 change any of its labeling in light of your

<p style="text-align: right;">Page 591</p> <p>1 testimony?</p> <p>2 A. No.</p> <p>3 Q. Did you ever express any</p> <p>4 concerns to the FDA about MS Contin?</p> <p>5 A. No. Do you mean the fact that</p> <p>6 Purdue was selling it unapproved? Is that</p> <p>7 what you mean?</p> <p>8 Q. I asked you if you expressed</p> <p>9 any concerns to the FDA about MS Contin?</p> <p>10 A. No.</p> <p>11 Q. One of your opinions relates</p> <p>12 to -- and I'm going to paraphrase again in</p> <p>13 the interest of time. -- you think that the</p> <p>14 MS Contin label shows that the -- that</p> <p>15 OxyContin was underwarned; right?</p> <p>16 A. I'm not sure what you're</p> <p>17 referring to. I don't understand that</p> <p>18 question.</p> <p>19 Q. I'll withdraw that in the</p> <p>20 interest of time.</p> <p>21 On page 85 of your report,</p> <p>22 Exhibit B156. You express the opinion that</p> <p>23 "Purdue misled physicians about the potency</p> <p>24 of OxyContin"; right?</p>	<p style="text-align: right;">Page 593</p> <p>1 A. Yeah. Can I -- do you want</p> <p>2 to --</p> <p>3 Here, let me try this. You can</p> <p>4 tell me anytime you want you've heard enough</p> <p>5 of the answer and I'll stop. Okay?</p> <p>6 What I do not want you to do is</p> <p>7 interrupt my answer except to tell me you've</p> <p>8 heard enough of the answer.</p> <p>9 Q. Okay. Dr. Egilman --</p> <p>10 A. I don't want to be interrupted.</p> <p>11 Q. Dr. Egilman --</p> <p>12 A. You can stop me, no problem,</p> <p>13 but you can't interrupt me with other</p> <p>14 questions because I can only answer one</p> <p>15 question at a time. Otherwise, the record</p> <p>16 gets confused.</p> <p>17 Q. Dr. Egilman, does that -- I'm</p> <p>18 going to note that your answer was</p> <p>19 incomplete.</p> <p>20 Does that document have a Bates</p> <p>21 number?</p> <p>22 A. It does.</p> <p>23 Q. And does that appear in your</p> <p>24 report?</p>
<p style="text-align: right;">Page 592</p> <p>1 A. Oh, you mean the mushroom</p> <p>2 document? Yes.</p> <p>3 Q. Is it your opinion that doctors</p> <p>4 were not aware of the potency of OxyContin?</p> <p>5 A. Yes.</p> <p>6 Q. What is the basis for this</p> <p>7 statement?</p> <p>8 A. This is an e-mail to herself,</p> <p>9 maybe some blind ccs, from Kathe Sackler.</p> <p>10 Kathe Sackler, Wednesday, August 6, 1997.</p> <p>11 "In recent team meetings, we</p> <p>12 have discussed the issue that OxyContin is</p> <p>13 perceived by some physicians, particularly</p> <p>14 oncologists, as not being as strong as</p> <p>15 MS Contin. Although this perception has had</p> <p>16 some effect with physicians switching to</p> <p>17 MS Contin with more severe" cancer</p> <p>18 patients -- "cancer pain patients, it has</p> <p>19 actually had a positive effect of physician's</p> <p>20 use of non-cancer pain."</p> <p>21 Q. Dr. Egilman?</p> <p>22 A. "Since OxyContin" --</p> <p>23 Q. Dr. Egilman, does that document</p> <p>24 have a Bates number on it?</p>	<p style="text-align: right;">Page 594</p> <p>1 A. It does.</p> <p>2 Q. What's the Bates number on that</p> <p>3 document?</p> <p>4 A. PDD8801118262.</p> <p>5 Q. May I see it, please?</p> <p>6 A. Sure.</p> <p>7 Q. Is this document the same</p> <p>8 document that appears at Exhibit B156 to your</p> <p>9 report?</p> <p>10 A. I don't know.</p> <p>11 (Witness was handed copies.)</p> <p>12 Q. And what is your opinion at</p> <p>13 B156?</p> <p>14 A. "Physicians had the</p> <p>15 misimpression that OxyContin was less potent</p> <p>16 than MS Contin. Instead of correcting this,</p> <p>17 Purdue took advantage of this ignorance to</p> <p>18 encourage inappropriate use of opioids. And</p> <p>19 I might add in, from the label, Purdue gave</p> <p>20 the impression that more -- that MS Contin</p> <p>21 and OxyContin had equal potency."</p> <p>22 Q. Is that a new opinion that you</p> <p>23 have in this case?</p> <p>24 A. New basis for that same</p>

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1 opinion.
 2 I missed that before. I just
 3 reread it when you gave me the label to read.
 4 So that was your contribution, and I
 5 appreciate it.
 6 Q. You said that physicians have
 7 the misimpression that OxyContin was less
 8 potent than MS Contin; right?
 9 A. Yes. When it was actually more
 10 potent than MS Contin.
 11 Q. Besides this one e-mail that
 12 you cite in Exhibit B156, do you have any
 13 other documents that form the basis for this
 14 opinion?
 15 A. Yes.
 16 Q. Are those included in your
 17 report?
 18 A. I think so, and then some of
 19 them will be in this pile to my right.
 20 Q. Are you referring to --
 21 withdrawn.
 22 Did you do any surveys of any
 23 doctors to see if they had an impression that
 24 OxyContin and MS Contin had equal potency?

Page 596

1 A. No.
 2 Q. Did you see any marketing
 3 materials that said that OxyContin and
 4 MS Contin had equal potency?
 5 A. Yes.
 6 Q. Which marketing materials were
 7 those?
 8 A. Let's start with the label.
 9 Right here. Exhibit 33.
 10 Q. I asked you about marketing
 11 materials.
 12 MS. CONROY: Objection.
 13 Q. (BY MS. NEWMARK) So let's
 14 start with marketing materials.
 15 MS. CONROY: Objection.
 16 Q. (BY MS. NEWMARK) Which
 17 marketing materials gave the impression that
 18 MS Contin and OxyContin had equal potency?
 19 A. Sorry, the label is marketing
 20 materials.
 21 Q. Besides the label, which
 22 marketing materials said that OxyContin and
 23 MS Contin had equal potency?
 24 A. Oh, none that I'm aware of.

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1 Besides the label.
 2 Q. Do you know of any physician
 3 who wrote a medically inappropriate or
 4 unnecessary prescription based on a
 5 misperception about the potency of OxyContin?
 6 A. Personally?
 7 Q. Yes.
 8 A. No.
 9 Q. Have you taken any surveys to
 10 determine whether any physicians wrote any
 11 medically unnecessary prescriptions based on
 12 a misperception about the potency of
 13 OxyContin?
 14 A. No.
 15 Q. Let's turn to the label. Bates
 16 number ending in 3668.
 17 A. How about before your next
 18 question, we just take a quick break.
 19 Q. I'm almost done, Dr. Egilman,
 20 and then we'll have a lunch break.
 21 A. Well, how much more have you
 22 got?
 23 Q. I'm almost done.
 24 A. How much more do you have?

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1 Q. I'm almost done.
 2 A. What does that mean? In
 3 English?
 4 Q. It depends on --
 5 MS. CONROY: How much time do
 6 you have left --
 7 MS. NEWMARK: -- how long your
 8 answers are. I have about five
 9 minutes.
 10 THE WITNESS: How much?
 11 MS. NEWMARK: Five minutes.
 12 THE WITNESS: Well, why don't
 13 we take a quick break. Because I
 14 don't think your five minutes will be
 15 good for five minutes.
 16 THE VIDEOGRAPHER: Off the
 17 record, 12:08.
 18 (Recess taken, 12:11 p.m. to
 19 12:12 p.m.)
 20 THE VIDEOGRAPHER: We're back
 21 on the record at 12:13.
 22 Q. (BY MS. NEWMARK) Dr. Egilman,
 23 when we -- when we took a break, I asked you
 24 to look at the label again, the page ending

Page 599	Page 601
<p>1 in 3668.</p> <p>2 A. Okay.</p> <p>3 Q. Can you please look in the</p> <p>4 middle column about two-thirds of the way</p> <p>5 down where it says "Table 3"?</p> <p>6 A. Right.</p> <p>7 Q. Do you know what this table is?</p> <p>8 A. Yeah. It's a conversion table.</p> <p>9 Q. What is it a conversion table</p> <p>10 of?</p> <p>11 A. These are rough morphine</p> <p>12 equivalents for various opioids.</p> <p>13 Q. Would you say here that it</p> <p>14 is -- this table compares the morphine</p> <p>15 equivalence of OxyContin -- withdrawn.</p> <p>16 Would you say that this</p> <p>17 compares different opioids, including</p> <p>18 oxycodone?</p> <p>19 A. In as mis -- yes, in as</p> <p>20 misleading a fashion as possible.</p> <p>21 Q. What is the basis for saying</p> <p>22 "in as misleading fashion as possible"?</p> <p>23 A. Because most people are going</p> <p>24 to look at this, look at -- do numbers in</p>	<p>1 label?</p> <p>2 A. Yes.</p> <p>3 Q. But that's your opinion; right?</p> <p>4 A. That's my opinion based on --</p> <p>5 and based on Sackler's e-mail, this one --</p> <p>6 one could -- one could infer that this was</p> <p>7 done this way, particularly with the language</p> <p>8 that I mentioned before, that you definitely</p> <p>9 pointed out earlier, that this was done on</p> <p>10 purpose with morphine at the bottom and</p> <p>11 oxycodone at the top, rather than just --</p> <p>12 you're talking here about two -- in the</p> <p>13 label, there's two drugs mentioned: Morphine</p> <p>14 and OxyContin.</p> <p>15 So the relevant information</p> <p>16 from giving people information about risks</p> <p>17 and benefits is to compare those two drugs.</p> <p>18 So in the table, I would have started with a</p> <p>19 comparison of oxycodone and morphine,</p> <p>20 comparative potency. And then it would have</p> <p>21 been obvious. Oxycodone would have been a 1</p> <p>22 and morphine was a .5.</p> <p>23 Part of the reason that the</p> <p>24 Purdue team -- not just Kathe Sackler, but</p>
Page 600	Page 602
<p>1 sequence from low to high or high to low.</p> <p>2 And you see how the numbers</p> <p>3 here are more or less random? Based on the</p> <p>4 alphabetical order of the drug on the left,</p> <p>5 but the relevant question for a physician in</p> <p>6 looking at this is to know what's the</p> <p>7 relative morphine equivalent. And you want</p> <p>8 to know that first. So this should be</p> <p>9 ordered by morphine equivalent dose. So I</p> <p>10 would start with the most potent and end with</p> <p>11 the least potent.</p> <p>12 And if you did that, then you</p> <p>13 could more easily compare OxyContin --</p> <p>14 oxycodone to morphine sulfate, for example,</p> <p>15 than the others.</p> <p>16 Q. Well, this is in the label that</p> <p>17 the FDA approved for OxyContin at its launch;</p> <p>18 right?</p> <p>19 A. Correct.</p> <p>20 Q. So that means the FDA also</p> <p>21 approved Table 3; right?</p> <p>22 A. Correct.</p> <p>23 Q. And do you disagree with the --</p> <p>24 with the FDA's approval of this table in the</p>	<p>1 the Purdue team believed that physicians were</p> <p>2 in the dark, as it were, is because this</p> <p>3 table was set up the way it was, making it</p> <p>4 hard for a physician to juxtapose oxycodone</p> <p>5 and morphine potency.</p> <p>6 Q. Dr. Egilman, as you said</p> <p>7 earlier, though, that this was -- that the</p> <p>8 table was done in some misleading way is just</p> <p>9 an inference; right?</p> <p>10 A. No. We know the results where</p> <p>11 there was misleading.</p> <p>12 MS. CONROY: Objection.</p> <p>13 THE WITNESS: It's not an</p> <p>14 inference. It's that this label, the</p> <p>15 text that you deftly pointed out</p> <p>16 before, and this table that you have</p> <p>17 now pointed out are part of the reason</p> <p>18 that physicians were kept in the dark,</p> <p>19 or entered the dark and kept in the</p> <p>20 dark with respect to the relative</p> <p>21 potency of oxycodone and morphine.</p> <p>22 Q. (BY MS. NEWMARK) Dr. Egilman,</p> <p>23 have you done any surveys of physicians about</p> <p>24 their understanding of Table 3?</p>

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1 A. No.

2 Q. So you don't know what

3 physicians' actual understanding of Table 3

4 was, right?

5 A. No. We only know what

6 physicians' actual understanding of the

7 relative potency of morphine and oxycodone

8 was based on Purdue's information garnered

9 from physicians.

10 Q. But that's just from Kathe

11 Sackler's e-mail; right?

12 MS. CONROY: Objection.

13 THE WITNESS: No, it's

14 summarizing Kathe Sackler's e-mail.

15 Kathe Sackler's e-mail refers to a

16 discussion and meetings on that exact

17 issue and an action program on that

18 exact issue.

19 Q. (BY MS. NEWMARK) Dr. Egilman,

20 during your testimony today, you've testified

21 about a lot of things that you would change

22 in the label. Is that fair to say?

23 MS. CONROY: Objection.

24 THE WITNESS: I mean, I've

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1 testified about what I've testified

2 about. I don't know how to summarize

3 that.

4 Q. (BY MS. NEWMARK) You

5 understand that there's a citizen's petition

6 process by which anyone can petition the FDA

7 to change a label for a pharmaceutical?

8 A. That's correct.

9 Q. Have you ever done that for

10 OxyContin?

11 A. No.

12 Q. Did you ever do that for

13 MS Contin?

14 A. No.

15 Q. Did you ever do that for any of

16 the opioids manufactured by any of the

17 defendants in this case?

18 A. No.

19 Q. Are you aware that a citizen's

20 petition actually was filed with the FDA for

21 OxyContin?

22 A. Yes. Kolodny.

23 Q. Do you know what happened with

24 that petition?

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1 A. Yeah. The FDA took the

2 opportunity to petition to reinforce all

3 the -- all of the wrong decisions that have

4 been made over the years.

5 Q. So you think that the FDA has

6 made a series of wrong decisions over the

7 years?

8 A. Yes.

9 MS. NEWMARK: Okay. I have no

10 further questions.

11 MR. BLANK: Before we break, I

12 would just want to make a statement

13 for the record that Dr. Egilman's

14 opinion and expert report contains 489

15 numbered opinions plus pages of

16 additional opinions, plus I think

17 33,000 related documents in support of

18 that.

19 We are all here to take

20 Dr. Egilman's deposition. Under the

21 protocol, we have two days.

22 Obviously, given the number of

23 defendants and the number of opinions,

24 it is impossible for any one defendant

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1 to ask Dr. Egilman about each of the

2 opinions he purports to offer. We're

3 doing the best that we can. We've

4 allotted time amongst the defendants

5 to give each defendant some amount of

6 time for Dr. Egilman, but on behalf of

7 Purdue, we think this is inadequate by

8 a long shot.

9 Even if we were the only

10 examiners over the two days, we could

11 not get through the opinions related

12 specifically to Purdue, and I think

13 the other defendants are in the same

14 situation.

15 So with that, we'll take the

16 lunch break now and resume with some

17 of the other defendants.

18 THE WITNESS: Let me just say

19 I'll be glad to answer any questions

20 that any of the defense have anytime

21 they want to call me up or meet with

22 me. No problem. I'm available. You

23 don't have to pay me for it.

24 MR. BLANK: Excellent.

<p style="text-align: right;">Page 607</p> <p>1 THE VIDEOGRAPHER: Off the 2 record at 12:22. 3 (Recess taken, 12:22 p.m. to 4 1:19 p.m.) 5 THE VIDEOGRAPHER: We are back 6 on the record at 1:20. 7 THE WITNESS: Before you start, 8 I have another plaintiff time 9 document. So there's my plaintiff 10 time document. 11 MS. LUCAS: Thanks, 12 Dr. Egilman. Is this a document that 13 we've not seen before? 14 THE WITNESS: This is a 15 document I've not brought before. 16 MS. LUCAS: Can we please mark 17 this document for the record as 18 Exhibit 35. 19 (Whereupon, Deposition Exhibit 20 Egilman 35, FDA and Opioids: What's a 21 Regulator to Do? Pain Care Forum. 22 Douglas C. Throckmorton, MD 23 PowerPoint, ENDO-Opioid_MDL-02791998, 24 was marked for identification.)</p>	<p style="text-align: right;">Page 609</p> <p>1 Q. Did you assume that the 2 plaintiffs will prove any particular facts in 3 forming your opinions in this case? 4 A. No. 5 Q. Have you been retained by 6 plaintiffs' counsel in any other opioids 7 litigations other than the MDL? 8 A. Yes. 9 Q. How many? 10 A. The three that we talked about 11 yesterday. 12 Q. And which three are those? 13 A. I don't remember the names of 14 the cases. They're 2004 cases. 15 Q. Have you been retained in any 16 post 2004 opioids litigations? And I'm 17 talking about opioids litigations in the last 18 few years other than the MDL? 19 A. No. 20 Q. You've never spoken to any 21 other counsel for any of the other plaintiffs 22 who are not in the MDL; is that correct? 23 MS. CONROY: Objection. 24 MS. LUCAS: Let me rephrase.</p>
<p style="text-align: right;">Page 608</p> <p>1 EXAMINATION 2 BY MS. LUCAS: 3 Q. Dr. Egilman, I have been 4 granted very limited time to ask you 5 questions even though I have a lot of 6 questions for you, so I'm going to ask you a 7 lot of yes-or-no questions and I would like a 8 yes-or-no answer from you whenever possible. 9 Will you do that for me? 10 A. Sure. 11 Q. Thank you. Were you asked to 12 make any assumptions in forming your opinions 13 in this case? 14 A. No. 15 Q. Did you make any assumptions in 16 forming your opinions in this case? 17 A. I'm not sure I understand that 18 question. 19 Q. Well, regardless if anyone 20 asked you to make any assumptions, did you in 21 fact make any assumptions in this case in 22 forming your opinions? 23 A. Out of context, I'm not sure 24 what that refers to.</p>	<p style="text-align: right;">Page 610</p> <p>1 Q. (BY MS. LUCAS) "Yes" or "no," 2 have you spoken about any non-MDL opioids 3 litigations going on in the last few years 4 with counsel for any of the opioids 5 plaintiffs other than the MDL counsel? 6 A. Yes. 7 MS. CONROY: Objection. 8 Q. (BY MS. LUCAS) How many 9 counsel other than the MDL counsel have you 10 spoken with? 11 MS. CONROY: Objection. 12 Q. (BY MS. LUCAS) I'll cut this 13 short. Have you spoken with any of the 14 Oklahoma plaintiffs' counsel about the 15 opioids litigation? 16 A. Yes. 17 Q. Which ones? 18 A. Which ones what? What lawyer? 19 Q. Correct. 20 A. I don't remember his name. 21 Q. Have you spoken with Brad 22 Beckworth? 23 A. No. 24 Q. Reggie Whitten?</p>

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1 A. No.
2 Q. Any other names that you can
3 think of that's --
4 A. I can't remember the guy's
5 name.
6 Q. And did they retain you?
7 A. No.
8 Q. Did you ever consult for them?
9 A. Consult. I sent them material.
10 Q. What material did you send
11 them?
12 A. The two boxes of Johnson &
13 Johnson bad acts documents that I brought
14 here.
15 Q. Oh, the bad acts documents that
16 say "Johnson & Johnson bad acts"?
17 A. Yes.
18 Q. I saw those. You sent that box
19 to the Oklahoma plaintiffs' counsel?
20 A. It's two boxes. I sent I think
21 a digital version.
22 Q. Are any of the documents inside
23 that box subject to a protective order?
24 A. I don't think so.

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1 Q. Did you check?
2 A. As far as I know, they're not.
3 Q. You are of the opinion in this
4 litigation, the MDL, that all the defendants
5 in the opioids litigation, including their
6 associated individuals and/or organizations,
7 are in a venture where they're acting in a
8 concerted fashion separately or together to
9 effect a particular result; correct?
10 A. Correct.
11 Q. And although Purdue was the
12 only member of that venture in 1984 in your
13 opinion, others joined around 1996 or '97;
14 correct?
15 A. No. I left out Duragesic.
16 That was also in the early '80s. That was a
17 Janssen product. I forgot them yesterday.
18 Q. Oh, you forgot them yesterday.
19 The early what?
20 A. Early '80s.
21 Q. The early '80s. And so would
22 you like to amend your testimony from
23 yesterday?
24 A. I just did.

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1 Q. So your contention is that
2 Janssen joined the venture in the early
3 1980s; is that correct?
4 A. Janssen started to sell an
5 opioid which led to the hockey stick in part
6 beginning in the early '80s.
7 Q. And by "an opioid," you mean
8 Duragesic; correct?
9 A. Correct.
10 Q. Was there an objective to the
11 venture?
12 A. Yes.
13 Q. What was the objective of the
14 venture in your opinion?
15 A. Make as much money as possible.
16 Q. Is that the only objective to
17 the venture in your opinion?
18 A. Yes.
19 Q. Other than Janssen, you're also
20 of the opinion that Johnson & Johnson was in
21 the venture; correct?
22 A. Correct.
23 Q. What year did Johnson & Johnson
24 join the venture, in your opinion?

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1 A. Well, Johnson & Johnson's
2 responsible for Janssen. They own Janssen.
3 So whatever Janssen did, Johnson & Johnson is
4 now responsible for.
5 Q. Is it your opinion that Johnson
6 & Johnson was in the venture in the early
7 '80s as well?
8 A. Independently?
9 Johnson & Johnson had a joint
10 marketing agreement with Ultram, or Ultram
11 with Purdue, as I recall. So whenever that
12 dates, that would have been joining with
13 other members of the venture to promote
14 opioid sales.
15 Q. So you're of the opinion that
16 J&J did not join the venture until there was
17 a joint marketing agreement related to
18 Ultram; is that correct?
19 A. No.
20 Q. Well you said, you told me
21 independently Johnson & Johnson had a joint
22 marketing agreement with Ultram. Or Ultram
23 with Purdue, as I recall.
24 "So whenever that dates, that

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1 would have been joining with other members of
2 the venture to promote opioid sales."
3 A. That's correct.
4 Q. Then what is the date that you
5 contend Johnson & Johnson joined the venture?
6 A. Well, Duragesic was a Janssen
7 product in the early '80s. It would have
8 been then, because Johnson & Johnson is
9 responsible for Duragesic now.
10 Q. So you are of the opinion that
11 J&J joined in the early '80s because of
12 Janssen; correct?
13 A. They own Janssen. Janssen
14 participated in the early '80s. Johnson &
15 Johnson is now Janssen. Or Janssen is now
16 Johnson & Johnson, yes.
17 Q. Yes. That's a yes?
18 A. That's a yes.
19 Q. Thank you.
20 Do you believe that Janssen is
21 still a member of the venture today, "yes" or
22 "no"?
23 MS. CONROY: Objection.
24 THE WITNESS: Yes.

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1 Q. (BY MS. LUCAS) Do you believe
2 that J&J is still a member of the venture
3 today, "yes" or "no"?
4 A. Yes.
5 Q. Other than Duragesic, do you
6 know what opioid medications Janssen has
7 manufactured?
8 A. Well, they originally developed
9 fentanyl. That's --
10 Q. This is a "yes" or a "no"?
11 A. Oh, I'm sorry.
12 Q. That's all right.
13 A. Yes. Some of them.
14 Q. You're a very experienced
15 expert, Dr. Egilman. And I don't have much
16 time, so unfortunately I have to ask a lot of
17 "yes" or "no" questions.
18 MS. CONROY: Objection, move to
19 strike.
20 Q. (BY MS. LUCAS) So you do know
21 what opioid medications Janssen has
22 manufactured. I would like a list of the
23 opioid medications that Janssen has
24 manufactured to your knowledge.

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1 A. Janssen apart from J&J?
2 Q. Yes.
3 A. Let's see what the list says.
4 Q. I would like you to give me
5 that list without reference to your notes,
6 please.
7 A. Well, that's good, but let me
8 look at my notes.
9 MS. LUCAS: Then I'm going to
10 put on the record that Dr. Egilman is
11 incapable of telling me what Janssen's
12 medications were without looking at
13 his notes.
14 And for the record,
15 Dr. Egilman's reading a green piece of
16 paper that looks to be a list of some
17 kind.
18 THE WITNESS: It's a list of
19 some kind.
20 So Janssen's got the fentanyl
21 that I mentioned, and then Nucynta and
22 Nucynta SR.
23 And then -- so that's the
24 Janssen participants.

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1 Q. (BY MS. LUCAS) What does "SR"
2 stand for?
3 A. Slow release.
4 Q. Do you know when the Duragesic
5 transdermal system was first approved for the
6 market in the United States by the FDA?
7 A. No.
8 Q. Do you know if Janssen
9 continues to market Duragesic in the
10 United States today?
11 A. I believe they do.
12 Q. Do you know when Nucynta IR was
13 first approved for market in the U.S. by the
14 FDA? And by "IR," I mean immediate release.
15 A. No.
16 Q. Do you know whether Janssen
17 still markets Nucynta IR?
18 A. Did I say Nucynta ER? SR?
19 Q. You said SR?
20 A. It's ER.
21 Q. Correct.
22 A. I'm sorry. I made a mistake.
23 Q. That's all right.
24 A. It's extended release.

<p style="text-align: right;">Page 619</p> <p>1 Q. I'll start again. 2 Do you know whether Janssen 3 still continues to market Nucynta IR today in 4 the United States? 5 A. I think so. 6 Q. Do you know whether Janssen 7 still continues to market Nucynta ER in the 8 United States today? 9 A. I think so. 10 Q. And do you know when Nucynta ER 11 was first approved for market in the 12 United States by the FDA? 13 A. No. 14 Q. Do you know Janssen's total 15 market share for all three of those opioids 16 Nucynta IR, Nucynta ER and Duragesic? 17 MS. CONROY: Objection. 18 THE WITNESS: No. 19 Q. (BY MS. LUCAS) Do you know 20 Janssen's total market share of all opioid 21 prescriptions in Summit County between 1997 22 and 2017? 23 A. I need to look at the Summit 24 County document to give you that.</p>	<p style="text-align: right;">Page 621</p> <p>1 Q. So you offered 800 -- 489 2 separate opinions in Exhibits B1 through B489 3 of your report, give or take; correct? 4 A. Take. Correct. There are a 5 few that have a lot of duplicates in them. 6 Q. Okay. So around 480 opinions 7 are in Exhibits B1 through B489; correct? 8 A. I think there's more dups of 9 that. It's probably in the 470 range. 10 Q. I'll go with that. So you 11 offered around 470 separate opinions in 12 Exhibits B1 through B489 of your report; 13 correct? 14 A. No, there's -- some of them 15 have more than one opinion. No. 16 Q. So how many total opinions do 17 you believe you've offered in those exhibits? 18 A. I don't know. 19 Q. Is it around 470, between 470 20 and 480? 21 A. I don't know. 22 Q. Is it more than 500? 23 A. I do not know. 24 Q. You have no idea?</p>
<p style="text-align: right;">Page 620</p> <p>1 Q. Well, unfortunately, we don't 2 have time for you to look through your 3 documents. So without looking at documents, 4 do you know Janssen's total market share of 5 all opioid prescriptions in Summit County 6 between '97 and 2017? 7 MS. CONROY: Objection. Like 8 do a memory test? 9 MS. LUCAS: Do you want to give 10 me more time? 11 MS. CONROY: The Court has 12 granted the time here. 13 MS. LUCAS: Then yes. 14 Q. (BY MS. LUCAS) So without 15 looking at your documents, do you know 16 Janssen's total market share of all opioid 17 prescriptions in Summit County between '97 18 and 2017? 19 A. No. 20 Q. Without looking at your notes, 21 do you know Janssen's total market share of 22 all opioid prescriptions in Cuyahoga County 23 between 1997 and 2017? 24 A. No.</p>	<p style="text-align: right;">Page 622</p> <p>1 A. No, I don't have -- I have an 2 idea. It's between 470, probably, and 600, I 3 would say on the high end. But you're not 4 including all of the opinions that are in the 5 preliminary sections -- some of which we just 6 went over with Purdue. 7 Q. Correct. 8 A. Which are not numbered. 9 Q. Correct. I'm interested right 10 now in only the exhibits. 11 So in B1 through B489, you've 12 offered between 470 and 600 separate 13 opinions; correct? 14 A. That's a rough estimate, yes. 15 I could be wrong. 16 Q. Of those between 470 to 600 17 opinions, around 14 of them specifically 18 mentioned either Janssen or J&J in the title; 19 correct? 20 A. I don't know. I haven't 21 counted them by company. 22 Q. Do you have any reason to 23 dispute that 14 of those opinions mentioned 24 Janssen or Johnson & Johnson?</p>

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1 A. I have no reason to agree or
2 disagree because I haven't done that count.
3 Q. Is that a no?
4 A. No, that's not a no.
5 Q. Do you have any reason to
6 dispute that there are 14 Janssen or Johnson
7 & Johnson mentions in the opinions in
8 Exhibits B1 through B489?
9 A. I have no reason to agree or
10 disagree because I haven't done that count.
11 Q. Okay. But you have no reason
12 to say differently; correct?
13 A. I have no reason to agree or
14 disagree because I have not done that count.
15 Q. Okay.
16 Now, by our count -- and I
17 understand you haven't done the count --
18 another 42 of those opinions in Exhibits B1
19 through 489 cite Janssen documents.
20 Do you have any reason to
21 disagree with that?
22 A. I have no reason to agree or
23 disagree because I have not done that count.
24 Q. All right. So even though you

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1 haven't counted, you don't have any reason to
2 agree or disagree that there are 14 opinions
3 that mention Janssen or J&J in the title and
4 another 42 that cite documents from Janssen;
5 correct?
6 A. No.
7 Q. Do you have any reason to
8 dispute that a total of 56 of your opinions
9 involve Janssen or Johnson & Johnson either
10 by name or by document?
11 A. Yes.
12 Q. Why is that?
13 Strike that.
14 How many opinions in your
15 report do you think mention J&J or Janssen by
16 name, or cite their documents?
17 Your best estimate.
18 A. I do not know.
19 Q. You have no idea?
20 A. I have not done that count.
21 Q. Would you dispute it if I said
22 56? "Yes" or "no."
23 A. Same answer. I have not done
24 the count. I have no reason to agree or

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1 disagree.
2 Q. So you're an expert. Let's
3 assume that there are 56 opinions that
4 involve Janssen and Johnson & Johnson.
5 Can you do that?
6 A. Yes. That's a different
7 assumption from the last question.
8 Q. Correct.
9 A. You'll recall.
10 Q. So that's a yes?
11 A. That's correct. I just want to
12 make it clear that that's different from
13 mentioning documents and opinions that
14 mention the name "Janssen."
15 Q. Understood.
16 Of the 384 hours that you've
17 spent on this case, do you know how much time
18 you've spent reviewing Janssen and Johnson &
19 Johnson evidence? "Yes" or "no"?
20 A. No.
21 Q. Do you know how many Janssen
22 and Johnson & Johnson documents you have read
23 in the 384 hours you've spent on this case,
24 "yes" or "no"?

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1 A. No.
2 Q. Are you able to give an
3 estimate of how many Janssen or J&J documents
4 you've read in the 384 hours you've spent on
5 this case?
6 A. No.
7 Q. Do you think you've reviewed
8 over 100 documents?
9 A. Yes.
10 Q. Do you think you've reviewed
11 over 100 Janssen and Johnson & Johnson
12 documents?
13 A. Yes.
14 Q. Do you think you've reviewed
15 over 1,000 Janssen and Johnson & Johnson
16 documents?
17 A. Yes.
18 Q. Do you think you've reviewed
19 over 10,000 Janssen and Johnson & Johnson
20 documents?
21 A. Not individually, but by
22 search, yes.
23 Q. So somewhere between 1,000 and
24 10,000 are documents you've actually reviewed

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1 that were produced by Janssen and Johnson &
2 Johnson; correct?
3 MS. CONROY: Objection.
4 MS. LUCAS: You can answer.
5 THE WITNESS: Yes, as described
6 above.
7 Q. (BY MS. LUCAS) So let's talk
8 about a couple of these opinions. And we do
9 not have time to go through all 56 because my
10 colleagues here would come after me with
11 pitchforks. So let's turn first to --
12 A. I'm sure they're not that mean.
13 Q. I don't know. They have a lot
14 of questions.
15 Let's turn to what I'm going to
16 mark as Exhibit 36.
17 (Whereupon, Deposition Exhibit
18 Egilman 36, Opinion-Around 1997,
19 "Venture" members Ortho-McNeil
20 (Johnson & Johnson) and Purdue began
21 co-promoting Ultram SR, intended for
22 the use of more moderate pain, was
23 marked for identification.)
24 Q. (BY MS. LUCAS) This is opinion

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1 B397. "Opinion. Around 1997 Venture members
2 Ortho-McNeil, parenthesis, Johnson & Johnson,
3 and Purdue began co-promoting Ultram SR,
4 intended for the use of more moderate pain."
5 Did I read that correctly?
6 A. Yes.
7 Q. And this is your opinion;
8 correct?
9 A. Yes.
10 Q. Ultram is the brand name for
11 tramadol; correct?
12 A. Yes.
13 Q. This opinion relates to Ultram;
14 is that right?
15 A. In part.
16 Q. In part?
17 A. Yes.
18 Q. Do you know whether Ultram is
19 at issue in this litigation?
20 A. I'm not sure I understand that
21 question. Do you mean is it one of the named
22 drugs in the complaint? Is that the
23 question?
24 Q. No. I want to know, do you

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1 know today whether the Court has ruled that
2 Ultram is or is not at issue in this
3 litigation?
4 A. I do not know.
5 MS. CONROY: Objection.
6 Q. (BY MS. LUCAS) You do not know.
7 If the Court had ruled that Ultram is not at
8 issue in this litigation, would this change
9 your opinion at all?
10 A. This opinion? No.
11 Q. Not at all? Even when
12 confronted with evidence that something in
13 your opinion is simply not at issue, you're
14 not going to change the opinion?
15 A. Correct.
16 Q. Okay. Now before we move on --
17 keep that with you real quick. The two
18 documents that you cite are two Purdue
19 documents; correct?
20 A. That's correct.
21 Q. One is PKY181320029?
22 A. Yes.
23 Q. And the other is PKY183033731;
24 correct?

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1 A. Yes.
2 MS. LUCAS: Mark those as 37
3 and 38.
4 Q. (BY MS. LUCAS) Now, I don't
5 want you to take all of your time reading
6 these documents because we don't have time,
7 but have you read these documents in coming
8 to your opinions?
9 A. Yes.
10 (Whereupon, Deposition Exhibit
11 Egilman 37, Non-Malignant Pain
12 Consensus Guidelines, PKY181320029-
13 181320030, was marked for
14 identification.)
15 (Whereupon, Deposition Exhibit
16 Egilman 38, Purdue Pharma, L.P.,
17 Proposal, 8-26-98, PKY183033731-
18 183033736, was marked for
19 identification.)
20 Q. (BY MS. LUCAS) Do you know
21 whether either Exhibits 37 or 38 says
22 anything about Ortho-McNeil?
23 A. Not without reading the
24 documents.

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1 Q. You would have to read the
2 document to tell me?
3 A. Yes.
4 Q. And you can't tell me where in
5 the document Johnson & Johnson is mentioned?
6 A. Correct -- without reading
7 them? Correct.
8 Q. I've read these documents, and
9 I can't find Ortho-McNeil or Johnson &
10 Johnson in either one of them.
11 Did you intend to base your
12 opinion about Johnson & Johnson on a document
13 that didn't mention J&J? "Yes" or "no."
14 A. I need to read the documents to
15 answer the question.
16 Q. Well, did you -- would you
17 intend to base an opinion about J&J on a
18 document that has nothing to do with J&J?
19 MS. CONROY: Objection.
20 THE WITNESS: Oh, no.
21 Q. (BY MS. LUCAS) And would you
22 intend --
23 A. Well, actually, nothing to do
24 with J&J? Correct. No, I wouldn't do that.

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1 Q. And would you intend to base
2 your opinion on documents that don't mention
3 Ultram if your opinion is about Ultram?
4 A. Depends on the context.
5 Q. Well, I've read these
6 documents, and I can't find Ultram either.
7 So would you intend to base an
8 opinion about Ultram on documents that don't
9 mention it?
10 A. Depends on the context.
11 Obviously in this case, yes.
12 Q. Yes. Okay.
13 All right. I want to mark as
14 39, your opinion No. 77. B77.
15 "Opinion. Janssen targeted
16 youth and athletes. Johnson & Johnson was
17 part of pain coalition with Janssen that
18 targeted youth. Pain is not a disease.
19 Johnson & Johnson and Janssen engaged in
20 actions targeted at directly influencing
21 potential patients and children."
22 Is that your opinion,
23 Dr. Egilman?
24 A. Yes.

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1 (Whereupon, Deposition Exhibit
2 Egilman 39, Exhibit B.77, David S.
3 Egilman Report Opiate Litigation, was
4 marked for identification.)
5 Q. (BY MS. LUCAS) "Yes" or "no."
6 Do you know what the pain coalition was?
7 A. Yes.
8 Q. And your opinion in No. 77,
9 Exhibit 39, is based on this Janssen Bates
10 number that's cited; correct?
11 A. Yes.
12 Q. "Yes" or "no," do you know
13 which Janssen employees were involved in the
14 pain coalition?
15 A. Not without looking at the
16 documents.
17 Q. Did you read any depositions in
18 forming this opinion? "Yes" or "no"?
19 A. No.
20 Q. Do you know whether any of the
21 programs mentioned in the pain coalition
22 documents were actually launched to the
23 public?
24 A. Yes.

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1 Q. You do? Do you know if any of
2 the youth programs mentioned in the pain
3 coalition documents were actually launched to
4 the public?
5 A. Yes.
6 Q. Do you believe that they were
7 launched?
8 A. Yes.
9 Q. What's the basis for that
10 belief?
11 A. There's e-mails back and forth
12 about a nurse who was conducting the training
13 in elementary schools, getting more
14 wristbands to promote the program with
15 elementary school kids.
16 Q. Are you sure about that?
17 A. I think so.
18 Q. Why isn't that document cited
19 here, Dr. Egilman?
20 A. I don't know.
21 Q. Strike that.
22 That document is not cited
23 there, is it?
24 A. Correct.

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1 Q. Do you know of any other youth
 2 programs that Janssen or Johnson & Johnson
 3 launched targeting youth?
 4 A. Besides this one? No.
 5 Q. You're not aware of any other
 6 programs targeting youth that actually
 7 launched; correct?
 8 MS. CONROY: Objection.
 9 THE WITNESS: With respect to
 10 pain, you're talking?
 11 Q. (BY MS. LUCAS) With respect to
 12 prescription medication or opioids.
 13 MS. CONROY: Objection.
 14 THE WITNESS: That's correct.
 15 Q. (BY MS. LUCAS) Have you ever
 16 heard of Smart Moves, Smart Choices?
 17 A. No.
 18 Q. Never heard of it?
 19 A. Correct.
 20 Q. Are you aware that Janssen
 21 partnered with the National Association of
 22 School Nurses to launch a program called
 23 Smart Moves, Smart Choices? "Yes" or "no"?
 24 A. I know there were nurses giving

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1 talks. Paid for by Janssen. I don't
 2 remember the name of the program.
 3 Q. Are you aware that Smart Moves,
 4 Smart Choices involved a program with nurses
 5 where the point was to warn kids about the
 6 dangers of opioids and other prescription
 7 drugs, "yes" or "no"?
 8 A. No.
 9 Q. Are you aware that that program
 10 was so popular with nurses, parents, and
 11 educators, and schools that it continued for
 12 six years and the website is still up today?
 13 "Yes" or "no"?
 14 A. No.
 15 Q. Now, of all of the opinions
 16 that you have that involve Janssen or Johnson
 17 & Johnson, we counted up the documents that
 18 you cited as the basis for your opinions. Do
 19 you know how many documents you cited as the
 20 basis for your opinions against Janssen and
 21 J&J?
 22 A. No.
 23 Q. We came up with 274 in
 24 Exhibits B1 through B489.

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1 Does that sound like something
 2 you would dispute?
 3 A. Yes.
 4 Q. Do you think there was more?
 5 "Yes" or "no"?
 6 A. Yes, I think there's more.
 7 Q. How many more do you think
 8 there are?
 9 A. I do not know.
 10 Q. Do you think there's more than
 11 300?
 12 A. Yes.
 13 Q. Do you think there's more than
 14 a thousand?
 15 A. Probably.
 16 Q. In Exhibits B1 through B489;
 17 correct?
 18 A. And the attached materials,
 19 yes.
 20 Q. All right. If I'm right, and
 21 there's only 274, you found those documents
 22 by running search terms listed in Exhibit D
 23 to your report; correct?
 24 A. No.

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1 Q. Let me rephrase that.
 2 You found documents by running
 3 the search terms in Exhibit D and that you
 4 talked about yesterday across the documents
 5 listed in Exhibit D.
 6 Oh, strike that.
 7 You found documents by running
 8 search terms across the documents located and
 9 listed in Exhibit D; correct?
 10 Exhibit D are the documents
 11 that you searched; right?
 12 A. I don't think -- what's
 13 Exhibit D?
 14 Q. The documents that you
 15 searched.
 16 A. No, the documents I searched is
 17 the entire database. I don't think that's --
 18 Q. Oh, the entire -- so you
 19 searched the entire database. Everything;
 20 right?
 21 A. That's what the searches were
 22 run on.
 23 Q. Got it.
 24 So if you've searched the

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1 entire Janssen production, that's over
2 700,000 documents. Do you have any reason to
3 dispute that?
4 A. No. I didn't do that count
5 either.
6 Q. You wanted your searches to be
7 accurate; correct?
8 MS. CONROY: Objection.
9 THE WITNESS: Correct.
10 Q. (BY MS. LUCAS) You wanted your
11 searches to be comprehensive; correct?
12 A. I wanted them to be relevant
13 more than comprehensive.
14 Q. You wanted your searches to be
15 relevant; correct?
16 A. Yes.
17 Q. You didn't want to cherry-pick
18 anything for your opinions; correct?
19 A. Correct.
20 Q. So if you're citing 274
21 documents out of over 700,000, are you aware
22 that that's 0.048 percent of the documents in
23 Janssen's database?
24 A. No.

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1 Q. And are you aware that your
2 opinions do not cite 99.9 percent of
3 Janssen's documents?
4 A. No.
5 Q. And if given the chance, are
6 you going to sit down in the witness chair
7 and take an oath to tell the truth and tell
8 the jury that you haven't taken anything out
9 of context as to Janssen or Johnson &
10 Johnson? Is that what you will do?
11 A. I don't think I'm going to be
12 answering that question unless you ask it.
13 And if you ask it, I had no
14 intent to take anything out of context.
15 MS. LUCAS: Thank you. I have
16 no more questions.
17 THE VIDEOGRAPHER: Off the
18 record at 1:52.
19 (Recess taken, 1:53 p.m. to
20 1:53 p.m.)
21 THE VIDEOGRAPHER: We are back
22 on the record at 1:53 p.m.
23 * * *
24 * * *

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1 EXAMINATION
2 BY MS. NAKAMURA:
3 Q. Good afternoon, Dr. Egilman.
4 My name is Angel Nakamura, and I represent
5 the Endo and Parr defendants in this case.
6 In reviewing your opinions in
7 detail, particularly over the last couple of
8 days, I see that your report doesn't include
9 any specific opinions regarding Parr
10 Pharmaceuticals; is that right?
11 A. I think there's some Endo
12 opinions.
13 Q. Correct. There are no specific
14 opinions to Parr; correct?
15 A. Not that I can recall.
16 Q. You don't cite any documents or
17 refer to documents that are specific to the
18 Parr defendant; correct?
19 A. Apart from the Endo documents,
20 correct.
21 Q. And you're not offering any
22 opinions regarding Parr Pharmaceuticals in
23 this action; is that right?
24 MS. CONROY: Objection.

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1 THE WITNESS: I think any
2 opinions that relate to Endo relate to
3 Parr.
4 Q. (BY MS. NAKAMURA) You don't
5 see Parr as a separate entity from Endo?
6 A. I'm not -- to the extent that
7 Endo and --
8 I'm not making any
9 determinations about who the proper defendant
10 is. So my opinions relate to the drug and
11 what was done with the drug. Somebody else
12 is going to have to figure out who was
13 responsible for that activity at different
14 points of time.
15 Q. Does your opinion refer to any
16 Parr Pharmaceutical documents?
17 A. Not that I recall.
18 Q. Your report and supporting
19 documents reference the Endo products
20 Opana ER and Percocet; is that right?
21 A. Correct.
22 Q. And your opinions don't relate
23 to any other Endo opioid products?
24 A. Let's see.

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1 Q. Let me just ask.
2 A. I think that's not correct.
3 Q. Do you intend to offer any
4 opinions about any other Endo products other
5 than Opana and Percocet?
6 A. The opinions that I have on --
7 probably by inference, yes.
8 Q. What does that mean, "probably
9 by inference"?
10 A. My mic just fell.
11 Q. Let me ask you a different
12 question, Dr. Egilman.
13 Does your expert report include
14 any opinions on products other than Opana and
15 Percocet with respect to Endo?
16 A. Yes. There are opinions with
17 respect to --
18 Yes. Sorry.
19 Q. And you were saying which
20 other -- which other Endo opioid products are
21 referenced in your expert report?
22 A. Well, there are references to
23 hydromorphone, and oxycodone in the report.
24 Q. And do you have any expert

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1 opinions regarding hydromorphone and
2 oxycodone?
3 A. Yes. I think they're in the
4 report.
5 Q. Have you ever prescribed
6 Opana ER?
7 A. No.
8 Q. Have you ever prescribed
9 Percocet?
10 A. Percocet? Yes, I think I've
11 used Percocet.
12 Q. Do you continue to prescribe
13 Percocet?
14 A. No.
15 Q. Do you recall the last time you
16 prescribed Percocet?
17 A. If you look at the IMS data, I
18 think it's there.
19 Q. Sitting here today, do you
20 recall the last time you prescribed Percocet?
21 A. No. You'd have to go to the
22 IMS sheets.
23 Q. And did you prescribe Percocet
24 based on any marketing that you received from

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1 the Endo sales representatives?
2 A. Not from a representative, no.
3 Q. Have you ever been detailed by
4 an Endo sales representative?
5 A. Not that I can recall.
6 Q. Do you recall ever speaking
7 with any representative of Endo and telling
8 them that their promotion or marketing
9 practices were false and misleading?
10 A. No.
11 Q. You have not interviewed or
12 surveyed prescribers to determine whether any
13 doctor received or relied upon marketing
14 materials by Endo regarding its opioid
15 products; correct?
16 A. Correct.
17 Q. So you can't identify any
18 specific prescriber who wrote an improper
19 opioid prescription based on Endo's conduct?
20 A. No, that's not correct.
21 Q. Can you clarify that answer,
22 please?
23 A. Sure.
24 Q. What do you mean? Can you --

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1 are you able to identify any specific
2 prescriber who wrote an improper opioid
3 prescription based on Endo's conduct?
4 A. I think so.
5 Q. Who is that?
6 A. I don't have the name.
7 Q. You don't have a specific
8 reference to a doctor?
9 A. I don't remember the name. I'm
10 not sure if I have a name. I may have a
11 reference to a physician, per se, in these
12 counties.
13 Q. And what is the reference to
14 the physician?
15 A. Well, that would be in the call
16 notes. If they were in call notes that
17 relate to and describe that activity, then
18 I'd have evidence.
19 And I have them somewhere in
20 the call notes in that pile.
21 Q. Sitting here today, can you
22 think of or recall a call note that gave you
23 any indication that a physician adjusted his
24 prescription practices based on Endo

<p style="text-align: right;">Page 647</p> <p>1 marketing?</p> <p>2 A. No, I can't remember a</p> <p>3 particular instance as I sit here today.</p> <p>4 Q. And you stated earlier you</p> <p>5 haven't interviewed or surveyed any patients</p> <p>6 to determine whether anyone has received a</p> <p>7 medically unnecessary opioid prescription as</p> <p>8 a result of Endo's conduct; correct?</p> <p>9 MS. CONROY: Objection.</p> <p>10 THE WITNESS: That's correct.</p> <p>11 Q. (BY MS. NAKAMURA) So you can't</p> <p>12 identify any specific patient who received an</p> <p>13 improper prescription based on Endo's</p> <p>14 conduct; correct?</p> <p>15 A. No. Not necessarily.</p> <p>16 Q. And what does that mean? Can</p> <p>17 you -- can you identify a specific patient</p> <p>18 who received an improper prescription based</p> <p>19 on Endo's conduct?</p> <p>20 A. There's two questions there.</p> <p>21 Which one do you want answered?</p> <p>22 Q. Are you able to identify any</p> <p>23 specific patient sitting here today who</p> <p>24 received an improper prescription based on</p>	<p style="text-align: right;">Page 649</p> <p>1 come out and said, "We're no longer going to</p> <p>2 sell oxycodone," for example, "or Opana ER</p> <p>3 because doctors are overprescribing, the</p> <p>4 drugs are being diverted, there's an opioid</p> <p>5 epidemic that our drugs are contributing to</p> <p>6 and that the whole industry's drugs are</p> <p>7 contributing to," then that would have</p> <p>8 impacted on the opioid epidemic in these two</p> <p>9 counties and in the United States.</p> <p>10 Q. You can't say that a patient</p> <p>11 would not have received a prescription for</p> <p>12 another opioid medication if Endo had not</p> <p>13 manufactured or marketed its opioid, could</p> <p>14 you?</p> <p>15 A. If they withdrew it for the</p> <p>16 reason I said, and said what I said, then</p> <p>17 some patients would not have gotten these</p> <p>18 opioids.</p> <p>19 Q. And what's your opinion on how</p> <p>20 the crisis would look different if Endo had</p> <p>21 not marketed its opioid products?</p> <p>22 A. If they had not marketed and</p> <p>23 explained the reason for not marketing the</p> <p>24 way I just described it, then that would have</p>
<p style="text-align: right;">Page 648</p> <p>1 Endo's conduct?</p> <p>2 A. Not by name.</p> <p>3 Q. Is that a "no"?</p> <p>4 A. No, it's a "not by name."</p> <p>5 THE VIDEOGRAPHER: I apologize.</p> <p>6 Can we go off the record for a second?</p> <p>7 Going off the record at</p> <p>8 2 o'clock p.m.</p> <p>9 (Recess taken, 2:00 p.m. to</p> <p>10 2:01 p.m.)</p> <p>11 THE VIDEOGRAPHER: We are back</p> <p>12 on the record at 2:01 p.m.</p> <p>13 Q. (BY MS. NAKAMURA) Are you able</p> <p>14 to identify, Dr. Egilman, any specific</p> <p>15 patient who received an improper prescription</p> <p>16 based on Endo's comment?</p> <p>17 A. No, not by name.</p> <p>18 Q. You can't say that the opioid</p> <p>19 crisis in Summit and Cuyahoga counties would</p> <p>20 look any different if Endo had not marketed</p> <p>21 or sold opioids; correct?</p> <p>22 A. No, not necessarily.</p> <p>23 Q. What does that mean?</p> <p>24 A. Well, that means if Endo had</p>	<p style="text-align: right;">Page 650</p> <p>1 significantly decreased the number of</p> <p>2 prescriptions given, the amount of diverted</p> <p>3 prescriptions, and it would have cut the</p> <p>4 hockey stick off.</p> <p>5 Q. Can you quantify what you mean</p> <p>6 by "significantly decreased"?</p> <p>7 A. Depends how strong that they</p> <p>8 said what they said. But if they said what I</p> <p>9 said and it was a statement against interest</p> <p>10 by an opioid manufacturer, it would have gone</p> <p>11 right back to where it was in 1996.</p> <p>12 Q. If Endo had stopped marketing</p> <p>13 its opioid products?</p> <p>14 A. Not just stopped marketing. If</p> <p>15 they'd given the reason for stop marketing or</p> <p>16 the reason that I gave, it would have knocked</p> <p>17 the hockey stick off.</p> <p>18 Q. Have you done any analysis to</p> <p>19 determine what portion of the epidemic was</p> <p>20 caused by Endo?</p> <p>21 MS. CONROY: Objection.</p> <p>22 THE WITNESS: Yes.</p> <p>23 Q. (BY MS. NAKAMURA) What have</p> <p>24 you done?</p>

<p style="text-align: right;">Page 651</p> <p>1 A. All of it. Everybody's 2 responsible for all of it. Everybody's 3 equally responsible. 4 Q. Everyone is equally 5 responsible? Is there any attribution to 6 Endo that you would have -- excuse me, strike 7 that. 8 Are you able to tell me what 9 portion of the opioid crisis was caused by 10 Endo? 11 A. Everybody is equally 12 responsible. It's the bank robbery. 13 Somebody's outside watching for the cops. 14 Somebody's inside with the gun. Everybody is 15 equally responsible for the community being 16 harmed. 17 Q. Would you mind turning to 18 page 82 of your report and taking a look at 19 opinion 7.136? 20 A. Got it. 21 Q. And that opinion states that 22 "Endo sought to influence formulary decisions 23 by finding people to influence"; correct? 24 A. Correct.</p>	<p style="text-align: right;">Page 653</p> <p>1 testimony in support of this opinion? 2 A. Correct. 3 Q. And you don't set forth the 4 original question that you sought to answer; 5 right? 6 MS. CONROY: Objection. 7 THE WITNESS: Well, you can add 8 a "did" to the beginning and that's 9 the question. 10 Q. (BY MS. NAKAMURA) Right. But 11 that isn't in -- anywhere in your expert 12 report; correct? 13 A. There's no "did" in front of 14 the opinion, that's correct. 15 Q. Let's take a look at the first 16 sentence of the e-mail which states "Marc, if 17 you have a clinical contact at VA who 18 influences formulary decisions, best if 19 they're a member of the formulary committee. 20 I'd be happy to provide a presentation on the 21 economic value of OP ER versus oxy." 22 Do you see that? 23 A. I do. 24 Q. You don't have any information</p>
<p style="text-align: right;">Page 652</p> <p>1 Q. And in support of your opinion, 2 you rely on one cited document; is that 3 right? 4 A. I need to look at 136 to answer 5 that question. 6 (Whereupon, Deposition Exhibit 7 Egilman 40, Exhibit B.136, David S. 8 Egilman Report Opiate Litigation, was 9 marked for identification.) 10 Q. (BY MS. NAKAMURA) And in this 11 e-mail -- or in this exhibit, I'm sorry, you 12 pasted an internal Endo e-mail; correct? 13 A. Correct. 14 Q. And other than this e-mail, you 15 cite to no other documents in support of this 16 opinion; right? 17 A. Not in this opinion, that's 18 correct. 19 Q. Do you cite to -- 20 Okay. Scratch that. 21 You don't list any interviews 22 that support this opinion; right? 23 A. No. 24 Q. You don't cite any deposition</p>	<p style="text-align: right;">Page 654</p> <p>1 on whether Endo ever identified a contact on 2 the VA formulary committee, do you? 3 A. Correct. 4 Q. And you don't know whether Endo 5 actually communicated with anyone on the VA 6 formulary committee; correct? 7 A. Correct. 8 Q. And you actually haven't 9 reviewed the presentation that's referenced 10 in this e-mail, have you? 11 A. Couldn't find it. 12 Q. Okay. And you don't know 13 whether anyone on the VA formulary committee 14 took any action based on the information 15 received? 16 A. Correct. 17 Q. Let's take a look at 18 opinion 7.137, please. 19 It's also still on page 82 of 20 your report. 21 (Whereupon, Deposition Exhibit 22 Egilman 41, Opinion-ENDO was either 23 too cheap to add its opioid labels to 24 the 2014 PDR or completely</p>

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1 irresponsible for this failure to warn
2 doctors of any data concerning these
3 dangerous drugs, was marked for
4 identification.)
5 Q. (BY MS. NAKAMURA) And this
6 opinion states: "Endo was either too cheap
7 to add its opioid labels to the 2014 PDR or
8 completely irresponsible for this failure to
9 warn doctors of any data concerning these
10 dangerous drugs"; correct?
11 A. Correct.
12 Q. And in support of this opinion,
13 you cite the information contained in
14 Exhibit B137; right?
15 A. Correct.
16 Q. And again, that's your only
17 citation?
18 A. Well, I cite the PDR. It's not
19 in the PDR.
20 Q. Correct. But in this opinion,
21 you -- your resource and your source for the
22 opinion is B.137; correct?
23 A. Well, plus the PDR. That's in
24 the opinion.

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1 Q. Right.
2 You don't list any other
3 documents?
4 A. Aside from the PDR and what you
5 see, that's correct.
6 Q. B137 contains two excerpts of
7 Endo's budgets; correct?
8 A. Correct.
9 Q. And other than those two budget
10 examples and the PDR, you don't rely on any
11 other documents in support of this opinion?
12 A. Correct.
13 Q. You don't list interviews?
14 A. Correct.
15 Q. You don't cite deposition
16 testimony?
17 A. Correct.
18 Q. And you don't set forth the
19 criteria you used to choose this document?
20 A. Correct.
21 MS. CONROY: Objection.
22 Q. (BY MS. NAKAMURA) Have you
23 ever reviewed any internal Endo
24 communications discussing whether Opana ER

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1 would be included in the 2014 PDR?
2 A. No.
3 Q. The PDR is a compendium of
4 FDA-approved labels for pharmaceutical
5 products; right?
6 A. Plus more, but yes.
7 Q. It contains --
8 A. It also includes pictures of
9 the drugs and a variety of other information.
10 Q. Thank you.
11 So it contains copies of
12 FDA-approved product labeling?
13 A. Correct.
14 Q. And those labels are actually
15 found on the products themselves; correct?
16 A. Well, they're passed out to the
17 patient when the patient gets the drug.
18 Q. Right. As part of the package
19 insert?
20 A. Right. It's usually 4 to
21 6-point type, yes.
22 Q. And the product labeling and
23 the package insert is also available on the
24 FDA's website; right?

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1 A. It is now. I'm not sure when
2 it first became available on the FDA web
3 site.
4 Q. And there's no requirement that
5 a manufacturer submit its product label for
6 inclusion in the PDR; correct?
7 A. A label requirement?
8 Q. An FDA requirement.
9 A. I don't think so.
10 Q. There's no legal requirement
11 either that a manufacturer submit its label
12 for inclusion in the PDR; correct?
13 A. Do you mean statutory?
14 Q. Yes.
15 A. Correct. There's no statute
16 that says you have to do that.
17 Q. Other than the PDR, a physician
18 can obtain the product labeling through other
19 sources; right?
20 MS. CONROY: Objection.
21 THE WITNESS: Not so easy.
22 Q. (BY MS. NAKAMURA) It's
23 available on the FDA website as you
24 previously testified?

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1 MS. CONROY: Objection.
2 THE WITNESS: I don't know when
3 it went on. They're on the website
4 now. I don't know if they were on the
5 website in 2014 or not.
6 Q. (BY MS. NAKAMURA) It's also on
7 the product itself; correct?
8 A. Yeah. The physician doesn't
9 get the product. The patient gets the
10 product.
11 Q. It's also available on the
12 manufacturer's website?
13 A. I don't know. I didn't check
14 the 2014 Endo website. May or may not have
15 been.
16 Q. And if it was on the Endo
17 website, a physician would have access to it
18 if he searched; correct?
19 A. If he or she searched the Endo
20 website and if it was on there, he or she
21 probably could have found it.
22 MS. NAKAMURA: Thank you.
23 THE VIDEOGRAPHER: Going off
24 the record at 2:11.

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1 (Recess taken, 2:10 p.m. to
2 2:12 p.m.)
3 THE VIDEOGRAPHER: We are going
4 back on the record at 2:13 p.m.
5 EXAMINATION
6 BY MR. ERCOLE:
7 Q. Doctor, again, given the
8 shortness of time, I'd ask that you keep your
9 answers to "yes" or "no" unless they call for
10 a different answer.
11 Sir, "yes" or "no," can you
12 identify for me -- strike that.
13 Sir, you are not giving an
14 opinion about any marketing by Watson
15 Laboratories, are you?
16 A. Correct.
17 MS. CONROY: Can you identify
18 yourself and who you represent.
19 MR. ERCOLE: Bryan Ercole from
20 Morgan Lewis.
21 MS. CONROY: Who do you
22 represent?
23 MR. ERCOLE: You're taking up
24 time. Do you want to cut this off?

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1 MS. CONROY: I'll give you just
2 a minute if you tell me who you
3 represent.
4 MR. ERCOLE: I represent the
5 Actavis and Teva defendants.
6 MS. CONROY: Thank you.
7 Q. (BY MR. ERCOLE) Sir, are you
8 giving any opinion about any marketing by
9 Actavis LLC?
10 A. You know, with respect to both
11 the previous opinion and this opinion, I'm
12 giving opinions about the drugs and how they
13 were marketed and not -- not who owned them
14 at different points in time.
15 Q. Sir, "yes" or "no." Are you
16 giving an opinion about any marketing by
17 Actavis LLC?
18 A. I don't know.
19 Q. Can you identify for me any
20 marketing statement about opioids made by
21 Actavis LLC in Cuyahoga County or Summit
22 County?
23 A. I have to look.
24 Q. Sitting here right now, can you

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1 identify for me any marketing statement about
2 opioids made by Actavis LLC in Cuyahoga
3 County or Summit County?
4 MS. CONROY: By memory?
5 THE WITNESS: Sitting here
6 right now, I have to look at the
7 marketing materials that relate to the
8 products that Teva was selling, Actiq
9 and Fentora, which are ones that are
10 included in the report and see exactly
11 who authored them. I don't remember
12 who authored them at various points in
13 time. So to answer that question, I
14 have to go back and look at the
15 documents generally by looking at the
16 Bates numbers.
17 Q. (BY MR. ERCOLE) Sir, I was not
18 asking any questions about Teva. My question
19 was about Actavis LLC. Do you know what
20 opioid medicines, if any, they market?
21 A. Yes.
22 Q. Okay. What medicines are they?
23 Just a list of them.
24 A. Norco, which is hydrocodone

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1 bitartrate and Tylenol.
2 Q. And, sir, you're -- I'll cut
3 you off and say that your answer is
4 incomplete, but you're reading off of a list
5 of drugs that you have; is that correct?
6 A. That's correct.
7 Q. Okay. Thank you.
8 A. So you don't want any more?
9 Q. No, I do not want any more than
10 that.
11 Do you have -- sitting here
12 today -- well, do you have a Redweld
13 concerning Actavis?
14 A. I think so.
15 Q. Okay. Can you ask your team to
16 provide that Redweld right now?
17 A. They're not my team. They're
18 the lawyers on the case.
19 Q. Fair enough. Can you provide
20 that Redweld for me?
21 A. I'm not in control of them.
22 Okay? So you can ask them.
23 MR. ERCOLE: Can you provide
24 the Redweld of Actavis documents?

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1 MS. CONROY: What do you
2 actually mean by "Actavis"? Do you
3 want the opinions --
4 If you would like the opinion
5 numbers, if you list the opinion
6 numbers.
7 MR. ERCOLE: Sure. I don't
8 want to object because we're taking up
9 time, but you said you believe you
10 have a Redweld Actavis document, and
11 I'd like to see what that Redweld is.
12 So can you please provide that Redweld
13 to the extent one exists.
14 MS. CONROY: And each Redweld
15 corresponds to an opinion. So you
16 need to provide the opinion number so
17 out of these boxes, we can identify it
18 and give you the Redweld.
19 MR. ERCOLE: Okay. Well,
20 you've done -- for other defendants
21 you've provided entire boxes of all of
22 the opinions there.
23 MS. CONROY: When they have
24 identified an opinion number.

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1 MR. ERCOLE: Okay.
2 Let me keep moving forward.
3 Q. (BY MR. ERCOLE) Sir, sitting
4 here today, can you identify any Summit or --
5 Summit County or Cuyahoga County prescriber
6 who wrote an opioid preparation because of a
7 false or misleading statement by any Actavis
8 entity?
9 MS. CONROY: Objection.
10 THE WITNESS: I don't know.
11 I'd have to go check the call notes.
12 I think I have call notes by Actavis.
13 So the answer is probably yes.
14 Q. (BY MR. ERCOLE) You believe
15 you have call notes concerning Actavis; is
16 that correct?
17 A. Correct.
18 Q. Okay. Sitting here today, can
19 you identify for me any -- the name of any
20 prescriber?
21 A. I don't think the names are in
22 there, but I feel I've got an opinion on
23 this. I think it's B7. B7's going to list
24 the documents which I think include Actavis

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1 documents that identify people who could be
2 characterized the way you characterize them.
3 That is, they were misled by Actavis
4 advertising or marketing. And you need to go
5 through that opinion and find them. I think
6 I have them broken down by company.
7 Q. Well, that's exactly what I've
8 asked. You said you've broken it down by
9 company.
10 Sir, it's a yes-or-no answer.
11 Sitting here right now, can you identify for
12 me any prescriber who was in Cuyahoga or
13 Summit County that was misled by any
14 statement by Actavis?
15 A. Not without looking at the
16 Actavis exhibits that are cited in B7.
17 Q. Okay. Thank you.
18 Sitting here today, can you --
19 sitting here right now, can you identify for
20 me any prescriber in Cuyahoga or Summit
21 County that was misled by any statement from
22 Cephalon?
23 A. Same answer. I have to go back
24 to the call notes. I think there's evidence

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1 of that in the call notes. So I have to look
2 at the call notes by Cephalon.
3 Q. Fair enough. And would that
4 same answer apply to Teva USA too?
5 A. Correct.
6 Q. Okay. Sir, do you -- you are
7 not giving an opinion on the TIRF REMS
8 program; is that correct?
9 A. Except that they don't work.
10 Q. Okay. That is not listed in --
11 the TIRF REM -- do you know what a TIRF
12 medicine is?
13 A. Yes. It's the transdermal
14 fentanyl.
15 Q. Are you aware, sir, that before
16 a prescription can be written under the TIRF
17 REMS program, a prescriber must sign an
18 agreement with the patient stating that he or
19 she has counseled the patient about the risk,
20 benefits, and appropriate use of TIRF
21 medicines?
22 A. That's what they're supposed to
23 do, that's right.
24 Q. And are you aware that under

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1 the TIRF REMS program, prescribers must be
2 aware of the risks of any TIRF REM -- TIRF
3 medicine before they write a prescription for
4 one of those medicines?
5 A. That's generally true under any
6 program, yes.
7 Q. And are you aware under the
8 TIRF REMS program, a doctor must agree to
9 assess his or her patient for signs of misuse
10 or abuse?
11 A. Yes.
12 Q. You do not list any specific
13 opinions in your report about the TIRF REMS
14 program, do you?
15 A. I think that's correct.
16 Q. Sir, do you have a Redweld for
17 Teva that contains the opinions that you're
18 giving about Teva in this case?
19 A. Well, I have -- I have Teva
20 opinions, and they have them in Redwelds back
21 there.
22 Q. Okay. And are they grouped
23 together?
24 A. I don't know. I didn't do that

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1 part of the organizing.
2 Q. Fair enough. I'm going to --
3 why don't I give you a composite exhibit of
4 documents here.
5 I will represent to you that
6 they are documents B1, B49, B50, B94, B310,
7 B398, and B454.
8 And by "documents," I mean the
9 Exhibits B to your report.
10 (Whereupon, Deposition Exhibit
11 Egilman 42, B1, B49, B50, B94, B310,
12 B398, and B454, was marked for
13 identification.)
14 MS. CONROY: And you want
15 counsel to pull those folders?
16 THE WITNESS: I don't -- I
17 mean, if they -- I'll represent to you
18 those are the documents that were in a
19 box over there marked "Teva," and
20 these are the opinions that are
21 reflected in that box over there.
22 So if you want to pull them,
23 you can pull them.
24 MS. CONROY: No, we're only

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1 going to pull them if you want them.
2 MR. ERCOLE: I'm just going to
3 move forward with my questions.
4 MS. CONROY: Don't pull them,
5 then.
6 THE WITNESS: I'm going to want
7 them.
8 MS. CONROY: You want them?
9 Then fine, we will pull them.
10 MR. ERCOLE: If he needs them,
11 I'd like to go off the record so we're
12 not taking up time doing that.
13 MS. CONROY: No, we're not
14 going off the record. These are
15 opinions that were provided to you
16 with the basis, and we have time -- we
17 have ourselves brought them here, and
18 if the doctor would like to refer to
19 them. You can tell him not to refer
20 to them.
21 MR. ERCOLE: They're right in
22 front of him.
23 MS. CONROY: No, that is not
24 the full opinion.

<p style="text-align: right;">Page 671</p> <p>1 MR. ERCOLE: Sure. Feel free 2 to pull the exhibits for those. 3 Q. (BY MR. ERCOLE) Sir, these are 4 Exhibits B -- the composite exhibit I showed 5 you reflect Exhibits B1, B49, B50, B94, B310, 6 B398, and B45. 7 Excuse me, B454 of your report. 8 Do you see that? 9 A. You said 398 and 454? 10 Q. Yes, sir. 11 A. That's what I've got. 12 Q. Okay. 13 Looking at those documents -- 14 and you refer to Teva in those documents? 15 Do you see that? 16 A. I do. 17 Q. Okay. 18 What Teva entity are you 19 referring to? 20 A. Well, for the first one, it 21 would be the Teva that was subject to the CIA 22 in 2010. 23 Q. Sir, and -- do you know that 24 with respect to each of the exhibits that I</p>	<p style="text-align: right;">Page 673</p> <p>1 that I've given you in that composite 2 exhibit, there is no deposition testimony 3 from this case to -- that is cited in those 4 exhibits to support those opinions; correct? 5 A. Correct. 6 Q. And there are no interviews of 7 prescribers or patients that have been 8 provided to support those opinions; correct? 9 A. Do you mean by me? 10 Q. Yes. 11 A. Correct. 12 Q. There is no specific written 13 narrative in connection in -- with these 14 exhibits, the composite exhibit I gave you to 15 support the opinions that you're giving; 16 correct? 17 MS. CONROY: Objection. 18 THE WITNESS: No. 19 Q. (BY MR. ERCOLE) That's 20 incorrect? 21 A. Correct. 22 Q. Okay. 23 You have not provided any 24 independent analysis in connection with the</p>
<p style="text-align: right;">Page 672</p> <p>1 provided to you, that Teva Pharmaceuticals 2 USA is not referenced in any of these -- any 3 of the documents that you have cut and pasted 4 or quoted from in connection with those 5 opinions? 6 A. Well, I don't think that's 7 correct. 8 Q. Okay. Do you know that all of 9 the documents referenced therein refer to 10 conduct by Cephalon as opposed to Teva 11 Pharmaceuticals? 12 MS. CONROY: Objection. 13 THE WITNESS: No, not exactly. 14 Q. (BY MR. ERCOLE) Do you know 15 the relationship between Cephalon and Teva 16 Pharmaceuticals USA? 17 A. I think Teva bought Cephalon. 18 Q. And that's your understanding? 19 A. They own them in some way. 20 That's my understanding based on the fact 21 that all these documents that we are 22 discussing have Teva Bates numbers on them. 23 They were produced by Teva, not Cephalon. 24 Q. With respect to the opinions</p>	<p style="text-align: right;">Page 674</p> <p>1 opinions that I'm showing you linking any of 2 the conduct that is described in these 3 opinions to any prescriber in Ohio; correct? 4 MS. CONROY: Objection. 5 THE WITNESS: Not necessarily. 6 Q. (BY MR. ERCOLE) Sir, have you 7 provided any written analyses, you 8 independently writing something in connection 9 with these opinions, that links any of the 10 conduct described in these opinions to any 11 opioid prescription in Ohio? 12 MS. CONROY: Objection. 13 Q. (BY MR. ERCOLE) I'm not asking 14 whether or not they quote documents or not. 15 Is there any narrative that you've offered 16 for these opinions linking anything, any of 17 the conduct described therein, to any opioid 18 prescription in Ohio? 19 A. There's no narrative by me. 20 MS. CONROY: Objection. 21 MR. ERCOLE: Okay. 22 Q. (BY MR. ERCOLE) And there's no 23 narrative by you -- 24 A. Hang on one second. Are you</p>

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1 doing all five opinions?
2 Q. Yes.
3 A. Okay. Let's -- let me look at
4 them all, then.
5 Q. Sir, I'll withdraw the
6 question, because we just -- in all due
7 respect -- with all due respect, we don't
8 have enough time for you to complete that
9 analysis.
10 Any --
11 MS. CONROY: Objection, move to
12 strike.
13 Q. (BY MR. ERCOLE) Any opinion
14 that you are giving -- strike that.
15 Any of these opinions say
16 specifically that Cephalon or Teva USA caused
17 the opioid crisis in Ohio?
18 MS. CONROY: Objection.
19 THE WITNESS: Yes.
20 Q. (BY MR. ERCOLE) Sir, do any of
21 the opinions I just showed you expressly
22 state that Cephalon or Teva USA caused the
23 opioid epidemic in Ohio?
24 MS. CONROY: Objection.

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1 THE WITNESS: No.
2 Q. (BY MR. ERCOLE) Okay. Do any
3 of the opinions I just showed you expressly
4 state that Cephalon or Teva USA caused any
5 prescriber in Ohio to write an improper
6 opioid prescription?
7 A. No.
8 Q. Do any of the opinions I just
9 showed you expressly state that Cephalon or
10 Teva USA caused any patient to be harmed by
11 any opioid prescription in Ohio?
12 A. Now I have to look at them.
13 Q. Sir, I'll withdraw the
14 question.
15 The title of your -- none --
16 none of the opinions that are titled say
17 anything about Teva or Cephalon causing any
18 patient to be harmed by any opioid
19 prescription in Ohio; correct?
20 A. The titles?
21 Q. Yes.
22 A. Correct. Well, let me look at
23 the titles and answer.
24 Q. Sir, I'll withdraw the

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1 question. The titles will speak for
2 themselves.
3 With respect to -- let me ask
4 this.
5 With respect to any of the
6 Teva, Cephalon or Actavis opinions that
7 you're giving in this case, is there anything
8 that would prevent a juror from reading the
9 documents that you cite in your opinions and
10 then reaching the same opinion?
11 MS. CONROY: Objection.
12 THE WITNESS: Depends on the
13 juror.
14 Q. (BY MR. ERCOLE) There may be
15 some that would be able to certainly reach
16 the same opinion?
17 A. Certainly if there was someone
18 with my training and expertise, they -- but
19 they wouldn't have time to read them during
20 the course of a short trial. So they
21 couldn't -- they couldn't -- it would be
22 like -- I mean, what I --
23 They couldn't -- they wouldn't
24 have time to read them all, and so that would

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1 not be possible during a trial.
2 I mean, if they were board
3 certified in internal medicine with training
4 in epidemiology and public health --
5 Q. Sir, it was a -- it was a
6 "yes/no" question.
7 A. Okay. Well, depends on the
8 juror, then.
9 Q. Okay. And --
10 A. And how much time they have
11 during the trial.
12 Q. Do you -- sir, are you -- are
13 you aware that with respect to the opinions
14 that you are giving as to Teva, Cephalon, any
15 Actavis entity, that the total number of
16 documents that you've cited in connection
17 with those opinions is less than 30?
18 A. I don't think that's correct.
19 Q. Okay. So you're not aware of
20 that, then?
21 A. I think it's wrong.
22 MR. ERCOLE: Okay. Great.
23 And I'll -- just continue to
24 note on the record that to be honest

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1 with you, this is absolutely
2 ridiculous that we're forced to have
3 to ask questions in the way that I did
4 concerning multiple entities. So I
5 appreciate your position on that, but
6 I just want to make it clear on the
7 record, we certainly object and
8 believe our due process rights are
9 being infringed upon.
10 Thank you.
11 THE VIDEOGRAPHER: Off the
12 record. 2:33.
13 (Recess taken, 2:32 p.m. to
14 2:51 p.m.)
15 THE VIDEOGRAPHER: We are back
16 on the record at 2:52.
17 EXAMINATION
18 BY MR. GOLDSTEIN:
19 Q. My name is Josh Goldstein. I
20 represent Mackenrodt LLC in this case.
21 A. Good afternoon.
22 Q. Now, you just testified to
23 Mr. Ercole that your opinions relate to
24 particular drugs and how they were marketed

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1 and not who owned those particular drugs.
2 Is that accurate?
3 A. No.
4 Q. Okay. Would you like to
5 correct your prior testimony?
6 A. I don't think that's my prior
7 testimony.
8 Q. Does the definition that you
9 provide of venture only apply to companies
10 and not drugs?
11 A. No, it applies to the companies
12 I mentioned and the opioid drugs that they
13 manufacture.
14 Q. And if those drugs are
15 manufactured by a non-defendant, they would
16 not apply to the venture?
17 A. I don't know if they would or
18 wouldn't. I don't have documents on a
19 company that's not in the litigation.
20 Q. Now, are you offering a legal
21 opinion of whether the defendants in this
22 litigation are engaged in a venture?
23 A. I don't know -- if I'm offering
24 an opinion, it's not a legal opinion. I'm

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1 not a lawyer or a judge.
2 Q. Have you ever been provided
3 with a legal definition of the word
4 "venture"?
5 A. No.
6 Q. And what about a conspiracy?
7 Are you offering a legal opinion about
8 whether the defendants are engaged in a
9 conspiracy?
10 A. No, I don't think -- I don't
11 use the word "conspiracy" at all.
12 Q. And have you ever been provided
13 in connection with your work in this case a
14 legal definition of the word "conspiracy"?
15 A. No.
16 Q. Now, you testified earlier --
17 I'm going to hand you what's been marked as
18 Exhibit 5 to your deposition.
19 And that's your assignment in
20 this case; correct?
21 A. Correct.
22 Q. And that assignment refers to,
23 in part, analyzing whether defendants worked
24 together and/or separately; do you see that?

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1 A. Yes.
2 Q. Are there any defendants who
3 worked only separately? Did not work
4 together as part of this venture?
5 A. No.
6 Q. So it would be fair to delete
7 the -- where you see it says "together and/or
8 separately," would it be accurate to delete
9 the "or"?
10 A. No.
11 Q. Are there any defendants who
12 were part of the venture but did not work in
13 concert with other defendants?
14 A. At some point in time, no.
15 Q. Okay.
16 A. Let me -- I'm not sure if
17 that's a clear answer to that question.
18 All of the members of the
19 venture at one point in time or another were
20 members of the same organization or
21 organizations that met the definition for the
22 venture.
23 Some of them acted
24 independently. That is, they did not -- some

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1 of the actions that the individual venture
2 member did were done independently of the
3 venture, and I have no evidence that the
4 venture knew about what they did when they
5 did it.

6 Q. Did you distinguish in your
7 report between when a defendant was acting
8 together versus when a defendant was acting
9 separately in furtherance of the venture?

10 A. In some cases, it's -- I think
11 it's almost always obvious, because I'm
12 either talking about acting through
13 organizations or KOLs, or I'm talking about
14 specific things that only one company would
15 know about.

16 Q. So that's the distinction you
17 would draw between acting together and
18 separately?

19 A. I didn't make a distinction. I
20 said "and/or." That's not a distinction.

21 Q. No, your testimony that you
22 just provided, that's the distinction you
23 would draw?

24 Or strike that.

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1 That's how you -- your
2 testimony is that's how you determined or set
3 forth in your report when a defendant was
4 acting together and when a defendant was
5 acting separately?

6 A. Well, what do you mean by
7 "That's how"?

8 Q. I'll strike the question.

9 You're aware that there are
10 manufacturers of opioids that are not
11 defendants in this case?

12 A. Yes.

13 Q. Now, putting aside the fact
14 that they're not defendants, but for that
15 fact, are they participants in the venture?

16 A. I do not know.

17 Q. And why is that?

18 A. Because I haven't seen their
19 documents. I haven't seen or reviewed their
20 materials.

21 I haven't reviewed their call
22 notes. I haven't done the things I've been
23 able to do with participants in the
24 litigation.

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1 Q. So it's possible to be a
2 manufacturer of prescription opioids and not
3 be a member of the venture, putting aside the
4 fact that your term is limited to defendants?

5 A. Anything is possible.

6 Q. But it just so happens that all
7 of the defendants are also all members of the
8 venture?

9 Is that right?

10 MS. CONROY: Objection.

11 THE WITNESS: No.

12 Q. (BY MR. GOLDSTEIN) If you
13 turn -- I'm going to hand you what's
14 previously been marked as Exhibit 12.

15 And I want to refer you to
16 subparagraph (2). You say "They" -- they
17 being the members of the venture -- is that
18 right?

19 A. Yes.

20 Q. "Worked together to influence
21 public perceptions of the class of narcotic
22 drugs," and then you list "drug toxicity,
23 untreated pain and encouraged use of
24 narcotics instead of non-medication

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1 treatments or less addictive drugs."

2 Do you see all of that?

3 A. Yes.

4 Q. Did all of the members of the
5 venture work together to influence public
6 perceptions of the class of narcotic drugs
7 with respect to the drug toxicity?

8 A. All of the members of the
9 venture worked in organizations or separately
10 to minimize drug toxicity.

11 Q. That wasn't my question. My
12 question was whether they all worked together
13 to influence public perceptions of the class
14 of narcotic drugs with respect to the drug's
15 toxicity?

16 A. All of the members of the
17 venture worked in organizations or separately
18 to influence public perceptions of the class
19 of narcotic drugs with respect to the drug's
20 toxicity.

21 Q. And is that true with respect
22 to untreated pain?

23 MS. CONROY: Objection.

24 THE WITNESS: Yes.

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1 Q. (BY MR. GOLDSTEIN) And same
2 for subparagraph (c)?
3 A. Yes.
4 Q. And is it your testimony that
5 your report sets forth the ways in which each
6 defendant did each of these three things?
7 2(a), (b), and (c) of Exhibit 12?
8 A. In the way that I described
9 before, yes.
10 And by that, I mean my
11 definition of "together and separately."
12 Q. Understood.
13 Now, you would agree with me
14 that there's no written explanation in your
15 report for when -- that defines when each
16 manufacturer that's a member of the venture
17 became a member of the venture.
18 A. It exists for some, probably
19 not for all.
20 Q. So just by reading your report,
21 each member of the venture could not look at
22 the report and determine when they became a
23 member of the venture?
24 A. No, they could know when they

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1 were a member of the venture. But when they
2 first became a member of the venture, that --
3 I didn't have data on that for all the
4 companies.
5 Q. You --
6 A. So in other words, when they
7 joined the American Pain Foundation, that
8 would be a joining of the venture. Or when
9 they joined the Pain Care Forum, that would
10 be joining an activity of the venture. Or
11 when they joined an activity --
12 Q. I think I understand your
13 testimony.
14 A. -- of JACHO --
15 Q. I think I understand your
16 testimony.
17 A. So the answer is incomplete.
18 No problem.
19 Q. So my question -- so you said
20 you didn't have the data for each company on
21 when they became a member of the venture;
22 right?
23 A. I didn't include the data for
24 membership.

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1 Q. Oh. So --
2 A. It wasn't like the Communist
3 Party. They didn't give out cards.
4 Q. So you have the data; you just
5 didn't include it in your report?
6 A. For some, I may have the data,
7 and for some, I don't have the data.
8 Q. So for some, even you have no
9 idea when the defendant became a member of
10 the venture?
11 MS. CONROY: Objection.
12 THE WITNESS: I don't know, for
13 example, when -- and I don't know if I
14 have this or not -- when Purdue first
15 became a member of the Pain Care
16 Forum, or when Endo first joined HDMA.
17 Q. (BY MR. GOLDSTEIN) That's not
18 my question.
19 A. I don't have that data.
20 Q. That's not my question. My
21 question is even you do not know when each
22 defendant that's a member of the venture
23 became a member of the venture.
24 MS. CONROY: Objection.

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1 THE WITNESS: Well, I think I
2 have -- most of that information is in
3 the documents, but I certainly didn't
4 put it in the report by date.
5 Q. (BY MR. GOLDSTEIN) Okay. Do
6 you have an understanding that manufacturers
7 of prescription opioids manufacture different
8 types of prescription opioids; right?
9 A. Yes.
10 Q. And those prescription opioids
11 have different benefits and risks associated
12 with them?
13 A. No, not necessarily.
14 Q. Do they have different
15 benefits?
16 A. Some do, some don't. Some have
17 the same benefits. After all, you have some
18 generics. They all are addictive, so that's
19 the same risk.
20 Q. So the ones --
21 A. They all work for short-term
22 pain, for some short-term pain. So there's a
23 wide range of overlap between different
24 opioids.

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1 Q. Is it fair to say that
2 manufacturers of prescription opioids found
3 in certain cases compete against each other
4 in manufacturing different products that they
5 bring to the market?

6 A. Yes.

7 Q. And if a manufacturer -- strike
8 that.

9 Are you -- you're aware that
10 some prescription opioids are not intended to
11 be used by patients who are not already
12 taking a prescription opioid?

13 A. Who have not developed
14 tolerance to prescription opioids. That
15 would be the TIRF REMS thing, for example.

16 Q. In an instance where a
17 manufacturer manufactures an opioid that's
18 intended to be used by a patient who's
19 already taking a different opioid, would you
20 agree that the -- that that manufacturer is
21 not manufacturing the opioid to be used by a
22 patient who's not already taking an opioid?

23 MS. CONROY: Objection.

24 THE WITNESS: No.

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1 Q. (BY MR. GOLDSTEIN) Now,
2 you've --

3 A. No, look at Insys.

4 Q. You previously testified that
5 you prescribed opioids.

6 Do you recall that testimony?

7 A. Yes.

8 Q. Before prescribing opioids, do
9 you agree that prescribers should always
10 ensure that the benefits outweigh the risks?

11 A. When possible.

12 It's not possible in all
13 situations.

14 Q. Is that what you did when you
15 prescribed opioids? You always evaluated
16 whether the benefits outweighed the risks?

17 A. No. I relied on the
18 information available to me to do that.

19 I could not -- I could not
20 evaluate risks and benefits because the
21 companies misrepresented risks and
22 benefits --

23 Q. I'm saying based on the
24 information --

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1 A. Excuse me. Let me finish my
2 answer.

3 Q. I'll strike the question.

4 Based on the information that
5 was available to you at the time you
6 prescribed opioids, did you always ensure
7 that the benefits outweighed the risks as you
8 understood them?

9 A. I tried to do that.

10 Q. And in trying to do that, you
11 relied on your medical training and
12 experience; correct?

13 A. In part.

14 Q. And on medical research and
15 scientific studies?

16 A. In part.

17 Q. On CMEs?

18 A. I don't think I had any CMEs on
19 opioids when I was prescribing.

20 Q. Are you aware that other
21 prescribers rely on CMEs?

22 MS. CONROY: Objection.

23 Q. (BY MR. GOLDSTEIN) I'll strike
24 the question.

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1 You relied on the contents of
2 the FDA-approved label when you prescribed
3 opioids?

4 A. Yes.

5 Q. And when you considered the
6 risks, you considered the patient's medical
7 history?

8 A. Yes.

9 Q. And you considered -- strike --
10 and when you considered the risks and
11 benefits, you considered the patient's
12 presentation based on your examination and
13 interview with that patient?

14 A. Yes.

15 Q. And you considered whether the
16 patient -- strike that.

17 Are you aware that particular
18 patients have a disproportionate risk of
19 developing an opioid-related substance abuse
20 or dependence?

21 Are some patients more likely
22 to develop a substance abuse dependence than
23 others?

24 MS. CONROY: Objection.

<p style="text-align: right;">Page 695</p> <p>1 THE WITNESS: Certainly those</p> <p>2 with a previous history of substance</p> <p>3 abuse, yes.</p> <p>4 Q. (BY MR. GOLDSTEIN) And is that</p> <p>5 something you consider when prescribing</p> <p>6 opioids?</p> <p>7 MS. CONROY: Objection.</p> <p>8 THE WITNESS: Well, I tried to</p> <p>9 consider that. That's something</p> <p>10 patients often don't tell the truth</p> <p>11 about.</p> <p>12 Q. (BY MR. GOLDSTEIN) What are</p> <p>13 the factors that you would look to to</p> <p>14 determine whether a patient was a particular</p> <p>15 risk of developing a substance abuse disorder</p> <p>16 or dependence?</p> <p>17 A. Basically whether they said</p> <p>18 they'd had a substance abuse disorder in the</p> <p>19 past. You asked that question. You asked</p> <p>20 about the history of a use of opioids.</p> <p>21 MR. GOLDSTEIN: We can go off.</p> <p>22 THE VIDEOGRAPHER: Off the</p> <p>23 record at 3:09.</p> <p>24 (Recess taken, 3:08 p.m. to</p>	<p style="text-align: right;">Page 697</p> <p>1 Egilman 48, as well as any documents that are</p> <p>2 contained in the colored folders that were</p> <p>3 marked as Group Exhibit 26 yesterday, contain</p> <p>4 all of the bases for your opinions 6, 123,</p> <p>5 385, 426, 444, and 480?</p> <p>6 (Whereupon, Deposition Exhibit</p> <p>7 Egilman 43, B.6 Redweld, was marked</p> <p>8 for identification.)</p> <p>9 (Whereupon, Deposition Exhibit</p> <p>10 Egilman 44, B.123 Redweld, was marked</p> <p>11 for identification.)</p> <p>12 (Whereupon, Deposition Exhibit</p> <p>13 Egilman 45, Tab 22, Exhibit 385, was</p> <p>14 marked for identification.)</p> <p>15 (Whereupon, Deposition Exhibit</p> <p>16 Egilman 46, B.426 Redweld, was marked</p> <p>17 for identification.)</p> <p>18 (Whereupon, Deposition Exhibit</p> <p>19 Egilman 47, B.444 Redweld, was marked</p> <p>20 for identification.)</p> <p>21 (Whereupon, Deposition Exhibit</p> <p>22 Egilman 48, B.480 Redweld, was marked</p> <p>23 for identification.)</p> <p>24 THE WITNESS: Yeah. I think</p>
<p style="text-align: right;">Page 696</p> <p>1 3:10 p.m.)</p> <p>2 THE VIDEOGRAPHER: We are back</p> <p>3 on the record at 3:11.</p> <p>4 EXAMINATION</p> <p>5 BY MS. WELCH:</p> <p>6 Q. Good afternoon, Dr. Egilman.</p> <p>7 My name is Donna Welch. I represent the</p> <p>8 Allergan defendants.</p> <p>9 A. Good afternoon.</p> <p>10 Q. Thank you.</p> <p>11 The first thing I want to try</p> <p>12 to do is fairly efficiently make sure that I</p> <p>13 have a record for my client of all of the</p> <p>14 documents and other material that forms the</p> <p>15 bases for your opinions as they specifically</p> <p>16 relate to Actavis or Allergan.</p> <p>17 I have identified opinions 6,</p> <p>18 123, 385, 426, 444 and 480, as specifically</p> <p>19 referring to Actavis and/or Allergan. And</p> <p>20 I've had counsel pull the support materials</p> <p>21 for those opinions.</p> <p>22 Am I correct, Dr. Egilman, that</p> <p>23 the materials included in those exhibits,</p> <p>24 which we've marked as Egilman 43 through</p>	<p style="text-align: right;">Page 698</p> <p>1 that's correct, but I think if you're</p> <p>2 delineating it by your initial</p> <p>3 prologue, it would also include B7 and</p> <p>4 the Perry appendices that I mentioned</p> <p>5 yesterday that I brought today.</p> <p>6 Q. (BY MS. WELCH) Thank you for</p> <p>7 that.</p> <p>8 Including, then, B7 and the</p> <p>9 Perry appendices that you referenced, do the</p> <p>10 materials marked in Egilman 4 through 48 and</p> <p>11 Egilman 26 together contain all of the bases</p> <p>12 for the opinions that I just identified?</p> <p>13 A. I believe so.</p> <p>14 Q. Thank you.</p> <p>15 I am also going to hand you</p> <p>16 what I've marked as Exhibit 49.</p> <p>17 Jayne, I'm going to read the</p> <p>18 Bates numbers and then hand you the other</p> <p>19 copy.</p> <p>20 (Whereupon, Deposition Exhibit</p> <p>21 Egilman 49, February 2010 email chain.</p> <p>22 Subj: RE: Call this Afternoon with</p> <p>23 attachments, Acquired_</p> <p>24 Actavis_00367447-367452 plus 3 more</p>

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1 pages, was marked for identification.)
2 Q. (BY MS. WELCH) This is an
3 e-mail dated 2-17-2010 that bears the Bates
4 label 7447, and it has two attachments.
5 Egilman 49, Dr. Egilman, I will
6 represent was one of the documents that you
7 identified yesterday as being contained in
8 Group Exhibit 26.
9 These documents reference a
10 Kadian speaker's program; correct?
11 A. Correct.
12 Q. Did you do anything, one way or
13 another, to determine if a Kadian speaker's
14 program was ever implemented by Actavis or
15 Allergan?
16 A. Apart from these documents?
17 No.
18 Q. So you do not know, one way or
19 another, whether a Kadian speaker's program
20 was implemented; correct?
21 A. No. I'd have to look at the
22 documents.
23 My recollection is it was one,
24 but I'd need to look to be sure.

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1 Q. I'll represent to you,
2 Dr. Egilman, that these refer to a proposed
3 Kadian speaker's program and a proposed
4 budget. I just want to make sure that I
5 understand correctly that other than these
6 documents, you have no information to support
7 an opinion that a Kadian speaker's program
8 was actually ever implemented; correct?
9 Other than these documents.
10 A. I don't think that's correct.
11 I have the KOL opinion, with -- which
12 included some funding from Kadian, which --
13 some of which, I think, went for speakers.
14 Now, whether those speakers were under this
15 program or another program, I don't recall.
16 Q. I'm going to have you turn to
17 page 129 in your report. And I want to ask
18 you about opinion 444. 7.444.
19 A. What page?
20 Q. 129.
21 A. Okay.
22 Q. Opinion 444 says "Allergan did
23 many bad things, such as lying about
24 addiction, expanding the opioid market,

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1 claimed pain was a disease, and entered into
2 settlements and guilty pleas."
3 Do you see that?
4 A. I do.
5 Q. You used the term "many bad
6 things."
7 Is that a term of art in your
8 areas of expertise?
9 A. No.
10 Q. Is there some technical
11 definition or meaning to "bad things" that
12 you can explain for me?
13 A. Sure. It would be defined by
14 the specific examples listed in the documents
15 that were listed below.
16 Q. Would you agree with me that
17 your report that has been marked by -- as an
18 exhibit in a case does not contain any
19 written analysis describing how you came to
20 that opinion?
21 MS. CONROY: Objection.
22 THE WITNESS: Do you mean by
23 me?
24 Q. (BY MS. WELCH) Correct.

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1 A. I think that's correct.
2 Q. Would you agree with me that
3 your report does not contain any written
4 analysis by you explaining how the referenced
5 or cited documents support the opinion that
6 Allergan did many bad things?
7 A. Correct.
8 Q. Would you agree with me that
9 your report does not contain any written
10 explanation by you why you believe that those
11 documents constitute the best evidence
12 regarding your opinion 7.444?
13 A. Correct.
14 Q. What was the answerable
15 question that was the underpinning for
16 opinion 7.444?
17 A. The same issue, the general --
18 my general assignment.
19 Q. What was the specific
20 uncertainty that you translated to the
21 answerable question for purposes of coming to
22 your expert opinion 7.444?
23 A. It's my assignment in the case.
24 Q. The specific uncertainty and

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1 the answerable question that underpin
2 opinion 7.444 are the assignment in the case
3 that you read yesterday from a piece of paper
4 and which was marked as an exhibit?
5 A. Correct.
6 Q. Exhibit -- I'm sorry,
7 opinion 7.444 lists four specific things:
8 "Lying about addiction, expanding the opioid
9 market, claiming pain was a disease, and
10 entering into settlement and guilty pleas."
11 Are there any other specific
12 things that you claim Allergan did that you
13 contend were bad things that you intend to
14 offer an opinion on?
15 A. Sure. Because that phrase
16 starts with "such as." So there are just
17 four examples.
18 Q. I have a limited amount of
19 time, Dr. Egilman, so I'd like you to list as
20 succinctly as you can the other bad things
21 you claim Allergan did that you intend to
22 offer an opinion on in this case?
23 A. Well, they're going to be in
24 these documents attached.

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1 Q. Can you list for me,
2 Dr. Egilman, the other bad things that you
3 contend Allergan did that you intend to offer
4 as opinions in this case?
5 A. I can certainly list some of
6 them by going through the documents.
7 Q. Can you tell me what they are?
8 A. Sure.
9 Actavis offered a rebate
10 program to Kroger for encouraging the sale --
11 Q. I don't need more details about
12 the rebate program.
13 Other than the four things
14 identified and offering a rebate program to
15 Kroger, can you list any other allegedly bad
16 things done by Allergan on which you intend
17 to offer an opinion?
18 A. Sure. I can go through them.
19 Q. And, Dr. Egilman, in the very
20 limited time I have available, I don't have
21 time, unfortunately, for you to go through
22 the documents.
23 Without going through the
24 documents, can you identify any other bad

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1 things that Allergan -- you claim Allergan
2 did on which you intend to offer an opinion?
3 A. Without looking at the
4 documents? No, I can't do that.
5 Q. Okay.
6 You cite to two settlement
7 agreements in your reference materials. Both
8 are dated 2010, and I will reference and
9 represent to you that neither of them related
10 to opioids.
11 Are you aware of any other
12 Actavis or Allergan settlement agreements
13 that relate to opioids?
14 A. No.
15 Q. Are you aware of any Allergan
16 or Actavis guilty pleas?
17 A. No.
18 Q. During what specific time
19 period is it your opinion that the opioid
20 market was expanded?
21 A. That's the hockey stick. So
22 that goes from 1996 to about 2016, with a
23 drop-off in 2016 because certain Class II
24 drugs were made Class III drugs.

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1 Q. So it's your expert opinion
2 that market expansion for opioids continued
3 through 2016; is that correct?
4 A. Well, they may have continued
5 after, but there's a -- there's a
6 complication in the data because Class III
7 drugs -- Vicodin, Vicodin was changed from a
8 Class III to Class II, so it's hard --
9 Q. Dr. Egilman, I hate to
10 interrupt, but you've actually answered my
11 question with respect to time period. I
12 appreciate that.
13 A. No problem.
14 Q. Do you intend to offer an
15 opinion on the specific amount by which you
16 believe Allergan expanded the opioids market?
17 A. Per se, Allergan?
18 Q. Yes.
19 A. No. My opinion is that, again,
20 everybody's 100 percent responsible.
21 Q. You cite a number of Kadian
22 marketing materials as the basis for your
23 opinions. Do you know for any those
24 materials whether Actavis or Allergan or its

<p style="text-align: right;">Page 707</p> <p>1 outside sales force ever used those marketing 2 materials after they acquired Kadian in 3 December 2008? 4 A. That would be in the call notes 5 somewhere, so I would have to look at them by 6 date. 7 Q. Did you review call notes 8 summaries for Actavis or Allergan that 9 included references to specific use of 10 marketing materials? 11 A. I think so, but I don't recall 12 specifically. 13 Q. Am I correct that you have not 14 attempted to determine whether any prescriber 15 in Ohio relied on any of the marketing 16 materials you reference in writing a 17 prescription for an opioid? 18 A. No. 19 Q. You have attempted to determine 20 whether a prescriber in Ohio relied on any of 21 those marketing materials in writing a 22 prescription for opioids? 23 A. Yes. 24 Q. What did you do to determine</p>	<p style="text-align: right;">Page 709</p> <p>1 correct. The second part, I don't know if 2 that happened. 3 Q. You'll agree with me that you 4 didn't cite to the corrective action plan; 5 correct? 6 A. Correct. 7 Q. And you didn't review the 8 corrective action plan? 9 A. I think I may have reviewed it. 10 Q. Can you explain how your 11 systematic retrieval of the best evidence 12 available regarding my client didn't include 13 a citation to evidence relating to the 14 corrective action plan? 15 A. I had no evidence that the 16 corrective action plan was ever implemented. 17 MS. WELCH: Dr. Egilman, I want 18 to make a statement for the record. 19 There are 220 Allergan documents 20 referenced in your report by my review 21 of the record. Nowhere in your report 22 do you explain how those documents 23 were retrieved, how they constitute 24 the best evidence, or how they support</p>
<p style="text-align: right;">Page 708</p> <p>1 whether a specific prescriber relied on those 2 specific marketing materials in writing a 3 prescription? 4 A. Read the call notes where there 5 are references to that or if there are some 6 e-mails where sales representatives are 7 congratulated for getting a particular 8 prescriber -- 9 Q. Other than referencing a call 10 note or an e-mail, did you do anything to 11 determine whether a prescriber in Ohio relied 12 on the materials in writing a prescription? 13 A. A particular prescriber? 14 Q. Yes. 15 A. No. 16 Q. You also cite to a 17 February 2010 warning letter from the FDA to 18 Allergan; correct? 19 A. Yes. 20 Q. You don't cite to any of the 21 corrective action plan -- you do not cite to 22 the corrective action plan approved by the 23 FDA and implemented by Allergan; correct? 24 A. Well, the first part is</p>	<p style="text-align: right;">Page 710</p> <p>1 your opinion. 2 I don't have time to question 3 you about any of your other opinions 4 at this time. I reserve all rights to 5 seek additional time from the Court to 6 question you about the basis for those 7 opinions. 8 MS. CONROY: Objection, move to 9 strike. 10 THE VIDEOGRAPHER: Off the 11 record at 3:26. 12 (Recess taken, 3:25 p.m. to 13 3:28 p.m.) 14 THE VIDEOGRAPHER: We are back 15 on the record at 3:29 p.m. 16 EXAMINATION 17 BY MR. SWANSON: 18 Q. Good afternoon, Dr. Egilman. 19 My name is Brian Swanson, and I represent 20 Walgreens. 21 A. Good afternoon. 22 Q. Good afternoon. 23 As Ms. Welch said, I wanted to 24 just begin with a housekeeping matter, but I</p>

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1 think, given the scope of your opinions, the
2 Walgreens house is a little bit bigger. So
3 I'm going to have to do this a little bit
4 differently, I think.
5 By my count, you have roughly
6 50 opinions cited in your report and appendix
7 that relate directly to Walgreens and
8 Walgreens' conduct. Does that sound
9 generally accurate to you, sir?
10 A. I haven't done any counts.
11 Q. No counts. Okay. Now, have
12 your team endeavored to put together a
13 Redweld to the opinions that relate
14 specifically to Walgreens?
15 A. They're not my team. Those are
16 plaintiff lawyers in the case.
17 Q. Okay. Have the plaintiffs'
18 lawyers endeavored to put together a Redweld
19 of the opinions that you have provided that
20 are specific to Walgreens?
21 A. I don't know.
22 Q. Am I correct, sir, that all of
23 the evidence that you rely on as the bases
24 for your opinions directed specifically to

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1 Walgreens are included in Exhibits B1 to B489
2 of your report?
3 A. I don't know.
4 Q. Does your report and the
5 attached appendices include all of the bases
6 for your opinions that are directed
7 specifically to Walgreens?
8 A. That I have in this litigation?
9 Yes.
10 Q. Yes, sir.
11 Now, in arriving at those
12 opinions that you have directed specifically
13 to Walgreens, can you tell me how many
14 documents you personally reviewed that were
15 produced by Walgreens?
16 A. No.
17 Q. Was it more than 100?
18 A. I don't know.
19 Q. Was it more than a thousand?
20 A. I don't know.
21 Q. What is your best estimate
22 within 500 documents?
23 A. I don't have one.
24 Q. Can you tell me how many pages

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1 of Walgreens materials you reviewed?
2 A. No.
3 Q. Did you personally review every
4 Walgreens document that you included in your
5 report as support for your opinions directed
6 to Walgreens?
7 A. Yes.
8 Q. Did you personally review the
9 entire document?
10 A. To the extent that I had the
11 entire document, yes. I'm not sure I had the
12 entire document in all cases, though. I
13 think there may have been some documents that
14 were redacted, et cetera.
15 Q. Okay. And the reason I ask is
16 that some of your appendices include excerpts
17 from Walgreens documents. You're aware of
18 that, correct, sir?
19 MS. CONROY: Objection.
20 THE WITNESS: That's correct.
21 Q. (BY MR. SWANSON) And for those
22 exhibits where you've only included an
23 excerpt from a document, did you review the
24 entire document in arriving at your opinion?

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1 A. Yes.
2 Q. Your report says, at page 38,
3 that you reviewed depositions taken in the
4 case. Is that a true statement?
5 A. Yes.
6 Q. If you relied, sir, on
7 deposition testimony of any Walgreens
8 employee as a basis for any of your opinions
9 on Walgreens' account, you cited that
10 deposition testimony somewhere in your
11 report; correct?
12 A. Correct.
13 Q. Can you testify today that you
14 personally read any deposition from any
15 Walgreens employee current or former?
16 A. I don't have any specific
17 recollection of reading any Walgreens
18 depositions.
19 Q. Did you have any discussions
20 with any plaintiffs' lawyers about the
21 testimony of any Walgreens employees?
22 A. I may have.
23 Q. What do you recall
24 specifically, if anything, about that

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1 conversation?
 2 A. Nothing.
 3 Q. Do you recall which witness
 4 testimony you may have discussed with
 5 plaintiffs' lawyers?
 6 A. No.
 7 Q. Did you review any discovery
 8 responses that were provided by Walgreens?
 9 A. I've read responses to the
 10 complaint. I can't recall if I read
 11 Walgreens' responses or other responses. I
 12 read responses to the complaint.
 13 Q. How about any responses to
 14 interrogatories that Walgreens provided?
 15 A. I can't recall, but I --
 16 probably.
 17 I've gotten some responses,
 18 interrogatories but not all.
 19 Q. Sitting here today, you just
 20 can't recall one way or the other?
 21 A. Correct.
 22 Q. In your report, there are
 23 references to the DEA and the DOJ; correct?
 24 A. Yes.

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1 Q. And specifically you refer to a
 2 settlement between Walgreens and the DOJ and
 3 the DEA; right?
 4 A. Yes.
 5 Q. Did you speak with any current
 6 or former members of the DEA or DOJ in the
 7 process of forming your opinions in this
 8 case?
 9 A. No.
 10 Q. Are you familiar with
 11 Dr. Joseph Rannazzisi?
 12 A. Yes.
 13 Q. Have you ever met him?
 14 A. No.
 15 Q. Other than discussions that you
 16 may have had with plaintiffs' lawyers and
 17 your students and staff, are there any
 18 discussions that you had with anyone that
 19 form the bases of any of your opinions in
 20 this case against Walgreens?
 21 A. No.
 22 Q. Earlier this morning, Mr. Blank
 23 went through some general questions with you
 24 regarding your experience with suspicious

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1 order monitoring systems. You recall that
 2 generally; correct?
 3 A. Yes.
 4 Q. What I want to do is not
 5 retread those grounds, but I want to ask you
 6 specifically about your experience with the
 7 Walgreens specific order monitoring systems,
 8 okay?
 9 A. Yes.
 10 Q. I think it's true and you
 11 testified this morning you've never seen a
 12 live version of the Walgreens suspicious
 13 order monitoring system; right?
 14 A. Yes.
 15 Q. That's correct?
 16 A. Yes. I answered it yes.
 17 Q. Yeah. Okay.
 18 And you also didn't evaluate
 19 any design documents for the Walgreens
 20 suspicious order monitoring system in
 21 arriving at your opinions in this case;
 22 correct?
 23 A. I'm not sure that's correct.
 24 There's a PowerPoint I referred to, I think,

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1 that Walgreens implemented that effectively
 2 reduced OxyContin prescriptions, and that may
 3 have referred in part to SOM programs.
 4 Q. Well, I'm not asking about
 5 documents that referred to the system. I'm
 6 asking about specific design documents for
 7 the system itself.
 8 You didn't review any of those
 9 in reaching your opinions on the Walgreens --
 10 A. I read something that said
 11 design.
 12 Q. Can I finish my question,
 13 please?
 14 A. Sure.
 15 Q. I'm asking you about specific
 16 design documents for the Walgreens SOM system
 17 itself. You didn't review any of those in
 18 reaching your opinions on Walgreens'
 19 suspicious order monitoring system; true?
 20 A. I don't know if that's true or
 21 not. I've read documents that review the
 22 Walgreens suspicious order monitoring system
 23 which included how it was or wasn't operating
 24 at different points in time. That would have

<p style="text-align: right;">Page 719</p> <p>1 included elements of design.</p> <p>2 Q. In the monitoring orders in the</p> <p>3 Walgreens suspicious order monitoring system,</p> <p>4 is that done at the store level or a</p> <p>5 distribution level?</p> <p>6 A. I think it was done at the</p> <p>7 distribution level. At least when the</p> <p>8 Jupiter fiasco occurred, that's what was</p> <p>9 done. Whether it's changed now or not, I</p> <p>10 can't recall.</p> <p>11 Q. Have you done any evaluation of</p> <p>12 whether the Walgreens suspicious order</p> <p>13 monitoring system has changed or evolved over</p> <p>14 time?</p> <p>15 A. I'm sure it did after they paid</p> <p>16 the \$80 million fine.</p> <p>17 MR. SWANSON: I'll move to</p> <p>18 strike that.</p> <p>19 Q. (BY MR. SWANSON) It's a</p> <p>20 yes-or-no question.</p> <p>21 Have you done any evaluation of</p> <p>22 whether the Walgreens suspicious order</p> <p>23 monitoring system has changed or evolved over</p> <p>24 time? "Yes" or "no." Have you done that</p>	<p style="text-align: right;">Page 721</p> <p>1 level. I don't -- at least until the</p> <p>2 Jupiter citation or payment, they</p> <p>3 didn't look at things at the pharmacy</p> <p>4 level.</p> <p>5 At least to some extent, based</p> <p>6 on the program they implemented for</p> <p>7 OxyContin, they did look at the</p> <p>8 pharmacy level.</p> <p>9 Q. (BY MR. SWANSON) You're</p> <p>10 saying --</p> <p>11 A. After that point in time.</p> <p>12 Q. The suspicious order monitoring</p> <p>13 system did? That's your testimony?</p> <p>14 A. Well, Walgreens did. I'm not</p> <p>15 sure if it was technically called part of the</p> <p>16 suspicious order monitoring system or if it's</p> <p>17 just something Walgreens was doing as part of</p> <p>18 its attempt to reduce OxyContin</p> <p>19 prescriptions.</p> <p>20 Q. Okay. My question is directed</p> <p>21 specifically to the suspicious order</p> <p>22 monitoring system. Does that system track</p> <p>23 dispensing of pharmaceuticals or orders for</p> <p>24 pharmaceuticals or something else? If you</p>
<p style="text-align: right;">Page 720</p> <p>1 analysis?</p> <p>2 A. Yes.</p> <p>3 Q. Describe for me how the system</p> <p>4 or technology changed over time.</p> <p>5 A. Oh, I don't remember the</p> <p>6 specific changes.</p> <p>7 Q. Well, what evaluation did you</p> <p>8 do that you can testify about, sir?</p> <p>9 A. Well, I think there was</p> <p>10 specific changes in the SOM system after the</p> <p>11 \$80 million cite that I mentioned as part of</p> <p>12 the settlement agreement.</p> <p>13 Q. What does the Walgreens</p> <p>14 suspicious order monitoring system track? Is</p> <p>15 it the dispensing of pharmaceuticals or</p> <p>16 orders or something else?</p> <p>17 MS. CONROY: Objection.</p> <p>18 THE WITNESS: It depends on the</p> <p>19 point in time. At one point in time,</p> <p>20 it looked at shipments from the</p> <p>21 distribution sites, although it didn't</p> <p>22 really look at them. It was designed</p> <p>23 to look at them. Walgreens is capable</p> <p>24 of looking at orders at the pharmacy</p>	<p style="text-align: right;">Page 722</p> <p>1 know.</p> <p>2 MS. CONROY: Objection.</p> <p>3 THE WITNESS: It used to just</p> <p>4 track orders from the distribution</p> <p>5 sites, as I recall.</p> <p>6 I think now they look at</p> <p>7 pharmacy works, at least in certain</p> <p>8 circumstances. Whether that's</p> <p>9 included as part of SOM or the</p> <p>10 particular program that I talked</p> <p>11 about, I don't know.</p> <p>12 Q. (BY MR. SWANSON) Do you know</p> <p>13 how the thresholds or limits are set in the</p> <p>14 Walgreens suspicious order monitoring system?</p> <p>15 MS. CONROY: Objection.</p> <p>16 THE WITNESS: No.</p> <p>17 Q. (BY MR. SWANSON) Do you know</p> <p>18 that the plaintiffs' lawyers deposed several</p> <p>19 Walgreens individuals regarding the Walgreens</p> <p>20 suspicious order monitoring system?</p> <p>21 A. Yes.</p> <p>22 Q. Did you review any of that</p> <p>23 testimony to inform your opinions regarding</p> <p>24 the suspicious order monitoring system?</p>

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1 A. No.

2 Q. As you sit here today, do you

3 believe that you have a better understanding

4 of the Walgreens suspicious order monitoring

5 system than the architects of that system?

6 A. No.

7 Q. Now, I want to ask you about a

8 few of your opinions. I'm not going to have

9 time to go through all of them.

10 I'd like to begin with

11 opinion 7.3. Do you have your report in

12 front of you so you can look at it?

13 A. I do.

14 Q. Okay. And -- while we do that,

15 it's on page 62.

16 Are you there? 7.3?

17 A. Yes.

18 Q. Okay. Opinion 7.3 reads

19 "Opinion. Walgreens' systems could be

20 manipulated to allow stores to circumvent

21 quantity restrictions -- known issue -- this

22 is how the system always worked."

23 Did I read that correctly?

24 A. No.

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1 Q. I did not?

2 A. That's correct.

3 Q. Can you tell me what I read

4 incorrectly?

5 A. You left the quotes off of

6 "This is how the system always works."

7 Q. Okay.

8 A. That's a quote from the

9 document.

10 Q. Okay. That's fair. I'll read

11 it again.

12 Exhibit -- or opinion 7.3.

13 "Opinion. Walgreens systems could be

14 manipulated to allow stores to circumvent

15 quantity restrictions -- known issue -- quote

16 This is how the system always worked, closed

17 quote."

18 Is that your opinion?

19 A. Yes.

20 Q. And then you say "See Exhibit

21 B3 hereto attached"; right?

22 A. Correct.

23 Q. So can we look at Exhibit B3?

24 I have a copy or you can be provided with

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1 one. It makes no difference to me.

2 A. Do you have a copy for me?

3 Q. Sure. Or do you want --

4 Go ahead.

5 In support of your opinion 7.3,

6 you cite a single document. That's

7 WAGFLDEA1032; correct?

8 A. Correct.

9 Q. And then, you excerpt from that

10 document in your Exhibit B3; right?

11 A. Correct.

12 Q. Okay. Now, you call Exhibit 73

13 an opinion. But what you're really doing is,

14 as you're noted, you're pulling quotes from a

15 Walgreens document; right?

16 MS. CONROY: Objection.

17 THE WITNESS: Part of it's a

18 quote; part of it's an opinion.

19 Q. (BY MR. SWANSON) Can you tell

20 me what part of it, then, is an opinion?

21 A. "Walgreens' systems could be

22 manipulated to allow stores to circumvent

23 quantity restrictions."

24 Q. So that's your opinion in 7.3,

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1 and then the quote is -- is what, a fact?

2 MS. CONROY: Objection.

3 THE WITNESS: Well, the rest --

4 the rest is the -- is the facts.

5 Okay?

6 I mean, the quote -- the quote

7 is a fact, and that's part of the

8 basis of the opinion, but the basis of

9 the opinion is the rest of the

10 document.

11 Q. (BY MR. SWANSON) Okay. So

12 when you refer to Walgreens' systems in your

13 opinion, what systems are you referring to

14 specifically?

15 A. Well, here the AS400 ordering

16 system.

17 Q. Is that different from the SOMS

18 system we were just talking about?

19 A. I don't know.

20 Q. I take it you've never seen the

21 Walgreens ordering system that you are

22 opining on in 7.3; correct?

23 A. If it's different from the

24 ordering system, yes.

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1 Q. What do you mean "If it's
2 different from the ordering system." Do you
3 mean if it's different from the SOMS system?
4 A. No.
5 This document refers to the
6 ordering system.
7 Q. Correct.
8 A. Okay? So if the suspicious
9 order monitoring system is separate from the
10 ordering system and not interact -- it does
11 not interact with the ordering system, then
12 you're correct.
13 Q. Right. And I'm asking do you
14 know if it does or does not?
15 A. Interact with the ordering
16 system?
17 Q. Yes, sir.
18 A. I don't know.
19 Q. And you can't tell me how
20 orders are entered into the Walgreens
21 ordering system at the pharmacy level, that
22 ordering system that's explained or described
23 in 7.3; right?
24 A. No, this describes how they're

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1 enter -- or how the ordering system is
2 circumvented.
3 Q. You personally have never
4 entered orders into the Walgreens' system;
5 right?
6 A. That's correct.
7 Q. So when you talk about the
8 ability to manipulate, what you're doing is
9 you're reading a quote from somebody else who
10 has entered orders into that system; true?
11 A. No. This is Christine Atwell
12 who's describing how a particular store is
13 manipulating the AS400 ordering system.
14 She's not necessarily the person -- she's not
15 the person manipulating the system or
16 entering orders.
17 Q. I'm trying to understand what
18 expertise you believe you bring to bear on
19 this opinion.
20 You personally have never
21 entered orders into a Walgreens ordering
22 system; right?
23 A. That's correct.
24 Q. Okay. And in 2011, you didn't

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1 know how to do it, and you personally didn't
2 know how to quote/unquote manipulate the
3 system; right?
4 A. That's correct.
5 Q. What you're doing instead is
6 you're reading a quote from somebody at
7 Walgreens, and you're offering that quote as
8 your opinion. True?
9 MS. CONROY: Objection.
10 THE WITNESS: That's correct.
11 Q. (BY MR. SWANSON) Now, do you
12 provide any analysis, expert analysis that
13 would connect your opinion to the quote from
14 the Walgreens employee?
15 A. The expert --
16 Yes.
17 Q. I'm sorry, I don't understand
18 your answer. The expert --
19 A. The answer was yes.
20 Q. And --
21 A. I cut my answer off to give you
22 a yes.
23 Q. Thank you. What --
24 A. No problem.

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1 Q. What written analysis do you
2 provide connecting your opinion in 7.3 to the
3 document that you claim supports it?
4 A. None.
5 Q. When it comes to describing how
6 the Walgreens ordering system works that's
7 described in Exhibit B3, would you agree that
8 the architects of that system are better able
9 to explain how it works than you are?
10 A. I don't know.
11 Q. Do you know who Barb Martin is?
12 A. No. She's the manager of
13 inventory for drugstore in this document.
14 Q. Right. And do you see that
15 she's -- she is an author of the bottom
16 e-mail in Exhibit B3?
17 A. Correct.
18 Q. And she's the one who is
19 talking about how the system has always
20 worked?
21 A. Yes.
22 Q. And do you know that Ms. Martin
23 was deposed in this case?
24 A. No.

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1 Q. Do you know who
2 Christine Atwell is other than that she's the
3 recipient of an e-mail?
4 A. Well, she's controlled
5 substances function manager, apparently.
6 Q. Do you know what that means?
7 A. No.
8 Q. Do you know what her job --
9 A. I don't know what her job
10 description is.
11 Q. Let me ask you about a related
12 exhibit. It's Exhibit 56, if you could,
13 please.
14 A. Are you done with this one?
15 Q. I am.
16 So we can begin, I guess, by
17 looking in your report at page -- page 70,
18 you have opinion 7.56; correct?
19 A. Correct.
20 Q. "Opinion. Walgreens knew
21 pharmacists could manipulate quantities with
22 the AS400 software, and they knew this could
23 result in criminal not just civil actions."
24 Is that your opinion?

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1 A. Correct.
2 Q. And then you direct us to
3 Exhibit B56; right?
4 A. Yes.
5 Q. Are you ready?
6 A. I think so.
7 Q. Okay. The --
8 MS. CONROY: No.
9 Q. (BY MR. SWANSON) The only
10 document you cite as the basis for your
11 opinion 56 is a Walgreens document Bates
12 stamped WAGMDL658246; correct?
13 A. Correct.
14 Q. And is that the document that
15 has been excerpted below the Bates number in
16 the exhibit?
17 A. Yes.
18 Q. And you don't cite any
19 deposition testimony or other testimony from
20 any Walgreens employees regarding this
21 opinion; true?
22 A. Correct.
23 Q. Do you know who Rex Swords is?
24 A. I don't know what his job title

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1 is.
2 Q. Okay. Do you know if Rex
3 Swords was deposed?
4 A. No.
5 Q. Do you know if Tasha Polster
6 was deposed?
7 A. No.
8 Q. Do you know if Dwayne Pinon was
9 deposed?
10 A. No.
11 Q. Do you know if Kermit Crawford
12 was deposed?
13 A. No.
14 Q. You've never read the testimony
15 of any of those individuals; is that true?
16 A. Correct.
17 Q. The -- Mr. Swords in this
18 e-mail describes a meeting that he had with
19 the -- with Mr. Rannazzisi; is that right?
20 A. Correct.
21 Q. And what you've done is you say
22 your opinion is that "Walgreens knew this
23 could result in criminal, not just civil
24 actions"; right?

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1 A. That's part of what my opinion
2 is.
3 Q. Okay. Well, let me ask you.
4 Your initial -- the first part of your
5 opinion is that "Walgreens knew pharmacists
6 could manipulate quantities with the AS400
7 software"; right?
8 A. Correct.
9 Q. Is there anything in this
10 document that you cite as the sole basis for
11 this opinion that relates to pharmacists'
12 so-called ability to manipulate quantities?
13 A. No. That's in the other
14 document.
15 Q. The -- all right. So I want to
16 focus what's on the -- what's on the document
17 that's in front of us. Okay?
18 Do you see that Mr. Swords
19 provides a bullet list of statements from a
20 meeting that he had with Mr. Rannazzisi.
21 A. Yes.
22 Q. Now, you, in your opinion, you
23 quote a -- one of the lines from that bullet
24 point list; right?

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1 A. Yes.
2 Q. And it's the last one. "If
3 this continues, they won't be accessing [sic]
4 civil penalties. There may be criminal
5 penalties"; right?
6 A. Correct.
7 Q. Who made that statement?
8 A. Rannazzisi.
9 Q. And what's your basis for
10 saying that Rannazzisi made that statement?
11 A. The lead sentence. "Rannazzisi
12 presented a large PowerPoint deck on
13 prescription drug trafficking and abuse for
14 approximately two hours." Comments, quote.
15 Q. Right. I understand.
16 The -- some of the bullet
17 points have quotation marks around them;
18 right?
19 A. Yes.
20 Q. And others don't; right?
21 A. Correct.
22 Q. Okay. What's the difference
23 between those in quotes and those that aren't
24 in quotes?

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1 A. That's it. Some were in
2 quotes. I assume the ones in quotes were
3 from the presentation, but I don't know. But
4 they're all -- they were all things that, in
5 my opinion, Rannazzisi presented.
6 Q. Well, it's not your opinion.
7 It's your speculation; right?
8 MS. CONROY: Objection.
9 THE WITNESS: No.
10 Q. (BY MR. SWANSON) Okay. The --
11 why do you not provide any written analysis
12 connecting your opinion to the document that
13 you claim supports it?
14 A. Because I think it's obvious on
15 its face. It's a quote from the document.
16 And the other document's also obvious on its
17 face. It says "Someone's manipulating the
18 system to increase orders appropriately."
19 The document says that. Okay. I mean, I
20 could write the document says that the AS400
21 system can be manipulated to increase orders
22 beyond those permissible. And this document
23 says "Rannazzisi told them that there could
24 be civil and criminal penalties for that kind

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1 of activity."
2 Q. So what expertise do you then
3 bring to bear on this document if all one
4 needs to do is read the quote that you
5 believe comes from Rannazzisi but can't
6 confirm?
7 A. Well, the expertise is finding
8 the document in the first place. Doing the
9 analysis to find the document. Putting it in
10 the context of everything else that was going
11 on at the time with respect to Walgreens.
12 Knowing about the Jupiter situation and the
13 other associated e-mails and conduct.
14 So it's -- it's finding
15 material and putting it in some kind of a
16 context and then explaining it. And
17 explaining the meaning of it.
18 Q. The -- all right. So
19 explaining the meaning and the context of the
20 quote you've cited there, you know that
21 Mr. Swords actually attended the meeting that
22 he's writing about; correct?
23 A. Yes.
24 Q. So the best evidence of what

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1 happened at the meeting and what was stated
2 at the meeting would come from Mr. Swords,
3 not from you; right?
4 A. I don't know.
5 Q. Let me ask you -- you can put
6 that one aside.
7 There's been a lot of -- you've
8 given a lot of testimony about what you've
9 called or termed "the venture," and I don't
10 want to repeat that testimony.
11 Your opinion is that Walgreens
12 is a member of what you call the venture;
13 right?
14 A. Correct.
15 Q. And your report doesn't
16 identify it, when it is that you claim
17 Walgreens became a member of what you called
18 the venture; right?
19 A. Correct.
20 Q. Do you know when Walgreens
21 became a member of what you call the venture?
22 A. No. There's no date specific.
23 Q. Do you have a year specific?
24 A. No. Because the time goes

<p style="text-align: right;">Page 739</p> <p>1 forward and back, in my understanding of a 2 bank robbery collective. 3 In other words, if I join a 4 group of bank robbers today, and they've been 5 robbing banks for 20 years, I'm responsible 6 for the 20 years of bank robberies before I 7 joined, and I'm responsible for anything 8 after I join -- 9 Q. I'm going to interrupt you. 10 You gave your answer to a yes-or-no question 11 as no, and I'll move to strike everything 12 after that. 13 What act do you claim -- 14 MS. CONROY: Objection. 15 Q. (BY MR. SWANSON) -- was the 16 act that brought Walgreens within what you 17 call the venture? 18 What was the initial act? 19 A. I don't have an initial act. 20 Q. Do you claim that Walgreens 21 remains a member of what you call the 22 venture? 23 A. Yes. 24 Q. What was the last action that</p>	<p style="text-align: right;">Page 741</p> <p>1 Q. Do you know how many it has in 2 Cuyahoga County? 3 A. No. 4 Q. Okay. I want to turn back to 5 your opinions, and I want to ask you about 6 opinion 7.155, which is on page 85. 7 A. Okay. 8 Q. Okay. You say, "Opinion. 9 Pharmacies could have reduced the opioid 10 problem" and then you say "See Exhibit B155 11 hereto attached." Right? 12 A. Correct. 13 Q. Okay. So can we look at 14 Exhibit B155? 15 Okay. So Exhibit B155 is your 16 opinion that pharmacies could have reduced 17 the opioid problem; right? 18 A. Correct. 19 Q. Correct. And then the only 20 document you cite in support of that opinion 21 is the document WAGMDL655767; true? 22 A. In this opinion, but they have 23 the whole PowerPoint with Walgreens reducing 24 the sale of OxyContin and describing the</p>
<p style="text-align: right;">Page 740</p> <p>1 Walgreens took to maintain its status as a 2 member of what you call the venture? 3 A. I don't know. 4 Q. You don't say anywhere in your 5 report when Walgreens began distributing 6 opioids to its pharmacies in Cuyahoga and 7 Summit counties; right? 8 A. Correct. 9 Q. Do you know? 10 A. No. 11 Q. Do you know when Walgreens 12 began distributing to any of its pharmacies 13 in Cuyahoga or Summit counties? 14 A. No. 15 Q. Do you even know what decade it 16 was? 17 A. Began? No, I don't know. 18 Q. Is that something that you 19 never tried to find out when you were 20 coming -- putting together your opinions? 21 A. Correct. 22 Q. Do you know how many pharmacies 23 Walgreens has in Summit County today? 24 A. No.</p>	<p style="text-align: right;">Page 742</p> <p>1 entire program that they implemented 2 elsewhere -- 3 Q. Okay. 4 A. -- in the report. 5 Q. Let's focus on the page that 6 you've excerpted in Exhibit B155. 7 You've put some -- or some of 8 your helpers have put some arrows in the 9 document; right? 10 A. Right. 11 Q. And it's a little difficult to 12 read. I'm going to try and you tell me if I 13 get it right; is that fair? 14 A. Sure. 15 Q. This is titled "National 16 Target, Good Faith Dispensing Checklist"; 17 right? 18 A. Correct. 19 Q. And then the first arrow points 20 to a box that reads "Additional checklist 21 requirements. Every" -- 22 A. Wait, wait, wait. Are we 23 looking at the same thing? 24 Q. I'm looking at B155?</p>

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1 A. Oh, you gave me 55.
2 Q. Oh.
3 A. Sorry.
4 Q. That's okay. 155, please.
5 A. That's a related document.
6 Q. Okay. Now are we on the same
7 page?
8 A. Now we're on the same page.
9 Q. And you are looking at a
10 PowerPoint slide from WAGMDL655767; right?
11 A. Right.
12 Q. The Powerpoint slide is
13 entitled "Target Drug GFD Checklist"; right?
14 A. Yeah. The --
15 Q. I'm looking at B155.
16 A. The slide that's extracted,
17 yes.
18 Q. This is the one you put in your
19 report; right?
20 A. Well, I have the entire Bates
21 document.
22 Q. I'm talking about what you put
23 in your report. It's the one slide. Right?
24 That's what I want to focus on with you.

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1 MS. CONROY: Objection. The
2 report contains the entire document.
3 THE WITNESS: The report
4 contains the entire document. The
5 entire Bates document is cited here.
6 Q. (BY MR. SWANSON) Can you look
7 at the slide on the exhibit you attached?
8 That's what I want to ask you about.
9 A. Yeah. I don't want you to --
10 mislead you --
11 Q. I'm not misleading anyone, sir.
12 A. No, I said I didn't want to
13 mislead you.
14 Q. Let's focus on it.
15 A. It says the entire document --
16 Q. We're good.
17 A. -- is the basis of the opinion.
18 Q. Got it.
19 The slide is entitled "Target
20 Drug GFD Checklist"; right?
21 A. Correct.
22 Q. And then either you or your
23 helper has put in a couple of red arrows;
24 right?

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1 A. Correct.
2 Q. And I want to focus on the red
3 arrow on the right and what it points to.
4 A. Okay.
5 Q. It says "Additional checklist
6 requirements. Every quote/unquote no is a
7 red flag. Use your professional judgment to
8 assess the prescription."
9 A. Correct.
10 Q. Okay. And then underneath it
11 says -- there's a line 4; right?
12 A. Correct.
13 Q. It says "The patient has
14 received the prescription from Walgreens
15 before."
16 A. Correct.
17 Q. And if that's checked no, then
18 it directs the pharmacist to use his or her
19 professional judgment to assess the
20 prescription; right?
21 A. Correct.
22 Q. And then the same goes from the
23 other criteria that are underneath it; right?
24 A. Any no goes to that bolded

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1 language.
2 Q. Now, I take it you don't take
3 issue with Walgreens for instructing its
4 pharmacists to exercise their professional
5 judgment; right?
6 A. No, I -- I say this is a very
7 good program. That's what I cite it for.
8 Q. Okay. And that was going to be
9 my next question you got there. You've cited
10 this Walgreens document because you believe
11 that Walgreens' good faith dispensing
12 checklist was a valuable program that helped
13 reduce opioid overprescriptions; right?
14 A. Exactly.
15 Q. Okay. And the -- you don't
16 cite any documents that describe or discuss
17 how Walgreens instructed its pharmacists
18 before this document was created; right?
19 A. That's correct.
20 Q. Okay. Do you know what
21 Walgreens policies or procedures were with
22 respect to dispensing prior to the good faith
23 dispensing checklist that you've identified
24 in Exhibit 155?

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1 A. No. I only know the results.
2 Q. But you don't know, for
3 example, if before 2013, it was Walgreens'
4 policy to direct their pharmacists to use
5 their professional judgment in assessing
6 prescriptions that they were asked to fill;
7 right?
8 A. I'm sure that general language
9 was somewhere in Walgreens' policy book.
10 Q. Now -- well, and do you know if
11 prior to 2013, pharmacists at Walgreens had
12 different practices when it came to filling
13 prescriptions for opioids? Do you know that
14 just one way or the other?
15 A. Yes.
16 Q. There were different practices
17 within Walgreens before 2013; is that your
18 testimony?
19 MS. CONROY: Objection.
20 THE WITNESS: That's my belief.
21 Q. (BY MR. SWANSON) But I want to
22 know what your testimony -- what you know,
23 not what you believe. Do you know if there
24 were different practices at Walgreens before

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1 2013?
2 A. Yes.
3 Q. What were the policies at
4 Walgreens with regard to dispensing -- good
5 faith dispensing prior to 2013?
6 A. I don't know what they were. I
7 just know what the effect was.
8 Q. You're not a pharmacist; right?
9 A. Correct.
10 Q. You've never been trained as a
11 pharmacist?
12 A. Correct.
13 Q. You haven't offered any
14 opinions and don't intend to offer any
15 opinions on the specific rules and
16 regulations that govern the pharmacy
17 profession; right?
18 A. Correct.
19 Q. You've testified a few times in
20 the deposition that you have prescribed
21 opioids to your patients in the past; right?
22 A. Yes.
23 Q. And when you prescribe these
24 opioids to your patients, you expect

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1 pharmacists to review your prescription and
2 fill it; right?
3 A. Yes.
4 Q. And in general, it would be a
5 problem for you if your patients -- and for
6 your patients if the pharmacist didn't fill
7 your legitimate prescriptions; right?
8 MS. CONROY: Objection.
9 THE WITNESS: Not necessarily.
10 Q. (BY MR. SWANSON) Well, as a
11 physician, sir, do you expect a pharmacist to
12 fill a legitimate prescription that you write
13 based on your assessment of patient's need;
14 right?
15 A. Not by itself, no.
16 Q. What did you mean "not by
17 itself"?
18 A. I mean the pharmacy -- there's
19 a physician role and there's a pharmacist
20 role. The pharmacist may have additional
21 information that I don't have about the
22 patient. And that -- you don't even restrict
23 that to opioids. For example, a patient may
24 be on --

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1 Q. Let me withdraw the question,
2 then, and restrict it to opioids so we're
3 keeping on focus here.
4 As a physician, you expect a
5 pharmacist to fill a legitimate prescription
6 for opioids that you write based on your
7 assessment of your patient's need; right?
8 A. No.
9 Q. Why not?
10 A. Because they have an
11 independent responsibility to evaluate
12 whether or not that's an appropriate drug for
13 that patient. They have independent
14 information that I don't have access to to
15 evaluate that question.
16 Q. Let me ask a slightly more
17 nuanced question.
18 As a physician, you expect a
19 pharmacist to exercise his or her
20 professional judgment to evaluate whether to
21 fill a legitimate opioid description that you
22 write based your assessment of a patient's
23 needs; right?
24 A. That's a beginning, yes. I

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1 expect more than that.
2 Q. What more do you expect of a
3 pharmacist than that he or she exercises his
4 or her professional judgment?
5 A. I expect the pharmacist to
6 check to see what other drugs that person is
7 on. What other prescriptions they've been
8 getting. Whether they've been getting
9 similar prescriptions from other
10 practitioners in the current era.
11 I expect the pharmacist to
12 check to see whether that patient has been
13 getting drugs from other pharmacies not
14 related to his or her pharmacy in a way that
15 would lead to abuse or addiction.
16 Q. And those are the sorts of
17 assessments that Walgreens documented in its
18 target drug good faith dispensing checklist
19 that you recommended; correct?
20 A. In 2015, correct.
21 Q. In what year?
22 A. In 2015, I think. Wasn't it?
23 Q. It's your opinion.
24 A. No, it's a fact. Can we look

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1 at a document?
2 Q. There are facts that aren't
3 opinions.
4 A. If I got the year wrong, I'll
5 correct the year.
6 Q. All right.
7 A. No. This is 2013.
8 Why don't we take a break.
9 Q. You know, I might be done, or I
10 might have one or two more questions.
11 A. Well, if you're done, then we
12 get a break. No problem.
13 You know, they've called me
14 experienced. The one thing I'm experienced
15 with --
16 Q. You know when you're about
17 done?
18 A. No, I know when a attorney says
19 "One more question," it's usually 25 to 30
20 questions.
21 MR. SWANSON: I'll pass the
22 witness.
23 THE WITNESS: Why don't we take
24 a break.

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1 THE VIDEOGRAPHER: Going off
2 the record at 4:11.
3 (Recess taken, 4:10 p.m. to
4 4:35 p.m.)
5 THE VIDEOGRAPHER: We are back
6 on the record at 4:36.
7 EXAMINATION
8 BY MR. HYNES:
9 Q. Good afternoon again. My name
10 is Paul Hynes. I represent CVS Indiana LLC
11 and CS Rx Services, Inc. Those are the CVS
12 entities who are defendants in this case.
13 And I want to as a preliminary question ask
14 whether your opinions where you state CVS, do
15 they relate to one or both of those entities?
16 A. That would be my assumption,
17 yes.
18 Q. That's your assumption.
19 We can refer, throughout my
20 examination, to those entities as CVS, if
21 that's easier.
22 A. Right. There may be an
23 exception to that. I think I make reference
24 to that. I think I make reference to the CVS

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1 PBM that did the formularies for Summit and
2 Cuyahoga County.
3 Q. Can you tell me where you refer
4 to the CVS PBM in your report?
5 A. I think it's mentioned.
6 Q. You think it's mentioned?
7 A. I think so.
8 Q. Can you point me to a section
9 or a page number or an exhibit?
10 A. No. But there's one opinion
11 that's wrong that's titled "EBMs" thanks for
12 reminding me.
13 For the Medicaid, the state
14 Medicaid did not use an external EBM for its
15 formulary. It used a -- its own formulary
16 committee.
17 The Cuyahoga and Summit County
18 used CVS, and two others. I think I've got a
19 list of them here. And there's a deposition
20 testimony of Woods in the case of Cuyahoga
21 County, at least I think referenced in the
22 report.
23 Q. Okay.
24 MR. HYNES: Can we go off the

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1 record for one minute?

2 THE VIDEOGRAPHER: Sure. Off

3 the record at 4:38.

4 (Recess taken, 4:37 p.m. to

5 4:38 p.m.)

6 THE VIDEOGRAPHER: We are back

7 on the record at 4:39.

8 MR. HYNES: And just for the

9 record, I will reserve some time to

10 address that opinion later in the day,

11 time permitting.

12 Q. (BY MR. HYNES) Dr. Egilman, can

13 you please turn to page 134 of your report?

14 A. Okay.

15 Q. Showing you Section 7.479

16 states that "CVS's suspicious order

17 monitoring program did not monitor suspicious

18 orders."

19 Is that an opinion that you're

20 rendering in this case?

21 A. Yes.

22 Q. Did you consult with any

23 plaintiffs' lawyers in arriving at this

24 opinion?

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1 A. No.

2 Q. Okay. The next sentence states

3 "CVS's SOM policy specified that if multiple

4 orders for the same store are flagged during

5 the same month, all orders after that first

6 order will not be investigated and will be

7 released based on the release of the first

8 order."

9 Did read that correctly?

10 A. No.

11 Q. What did I not read correctly?

12 A. The last phrase where it's got

13 the word "automatically."

14 Q. Okay. "Will be automatically

15 released based on the release of the first

16 order." Is that what you're referring to?

17 A. Yes, that's the part that you

18 read incorrectly.

19 Q. Okay. That statement refers to

20 CVS's SOM policy; correct?

21 A. Correct.

22 Q. You don't cite any CVS SOM

23 policies in support of this opinion, do you?

24 A. Can I see 479?

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1 Q. Sure. Do you have it?

2 A. Just let me be clear, here,

3 when you say "do I have it," in the notice of

4 this deposition, I was not asked to bring a

5 single piece of paper. But I have it.

6 Q. Okay. Well, then let's look at

7 it.

8 A. You're welcome.

9 Q. Is the document in front of you

10 a CVS SOM policy?

11 A. I don't have the whole --

12 Do you have the whole document?

13 I don't know. I have to look

14 at the whole document.

15 Q. Are you aware that CVS has

16 policies governing its suspicious order

17 monitoring system?

18 A. Yes.

19 Q. Did you review any of those

20 policies in preparing the report?

21 A. Yes.

22 Q. Which policies did you review?

23 A. I don't recall.

24 Q. To the best of your

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1 recollection, is the document that you

2 excerpted in Exhibit B.479 a CVS SOM policy?

3 A. I have to look at it. I don't

4 remember.

5 Q. To the best of your

6 recollection?

7 A. To the best of my recollection,

8 I need to look at the document.

9 Q. I will represent to you that

10 document that you've excerpted there is an

11 attachment to a November 2012 e-mail from

12 Craig Schiavo.

13 Do you know who prepared that

14 document?

15 A. The document that you're not

16 showing me that I don't have? No.

17 Q. Okay. Do you know who

18 Mr. Schiavo is?

19 A. No.

20 Q. Do you know whether he was a

21 member of CVS's suspicious order monitoring

22 team?

23 A. No.

24 Q. Do you know what his position

<p style="text-align: right;">Page 759</p> <p>1 at CVS was?</p> <p>2 A. No.</p> <p>3 Q. Do you know if he was deposed</p> <p>4 in this case?</p> <p>5 A. No.</p> <p>6 Q. Did you attempt to review any</p> <p>7 deposition testimony about that document that</p> <p>8 is excerpted in that exhibit?</p> <p>9 A. No.</p> <p>10 Q. How did you find that document?</p> <p>11 A. Through a search.</p> <p>12 Q. Who performed the search?</p> <p>13 A. I did or my staff did.</p> <p>14 Q. What did you do to confirm that</p> <p>15 the excerpted language from that document</p> <p>16 accurately reflected how CVS's suspicious</p> <p>17 order monitoring system operated?</p> <p>18 MS. CONROY: Objection.</p> <p>19 THE WITNESS: We looked for</p> <p>20 other documents around that document</p> <p>21 in the search.</p> <p>22 Q. (BY MR. HYNES) Did you find</p> <p>23 any?</p> <p>24 A. I don't think so.</p>	<p style="text-align: right;">Page 761</p> <p>1 Q. Are you --</p> <p>2 A. If you could show it to me.</p> <p>3 Q. Are you familiar --</p> <p>4 A. Could I finish? If you show it</p> <p>5 to me, I may be familiar with it.</p> <p>6 Q. Understood.</p> <p>7 A. I can't recall it by name.</p> <p>8 Q. Are you familiar with CVS's SOM</p> <p>9 policies?</p> <p>10 A. Not in detail --</p> <p>11 Q. Can you tell me --</p> <p>12 A. -- without looking at them.</p> <p>13 Q. Can you tell me what they said</p> <p>14 about how to perform due diligence on orders?</p> <p>15 A. Not without looking at them.</p> <p>16 Q. Are you familiar with what</p> <p>17 information CVS staff had available to them</p> <p>18 to do due diligence on flagged orders?</p> <p>19 A. Not without looking at the</p> <p>20 procedures, no.</p> <p>21 Q. Are you familiar with the micro</p> <p>22 strategy database?</p> <p>23 A. No.</p> <p>24 Q. The infomatic database?</p>
<p style="text-align: right;">Page 760</p> <p>1 Q. Okay. Are you familiar with</p> <p>2 CVS's suspicious order monitoring system?</p> <p>3 A. Not specifically, no.</p> <p>4 Q. So you're not familiar with the</p> <p>5 algorithms that were used to flag orders?</p> <p>6 A. Correct. Except to the extent</p> <p>7 that they're mentioned here.</p> <p>8 Q. So is that the only document</p> <p>9 you recall reviewing related to CVS's</p> <p>10 suspicious order monitoring system?</p> <p>11 A. No.</p> <p>12 Q. What documents did you review?</p> <p>13 A. I can't recall.</p> <p>14 Q. How many documents related to</p> <p>15 CVS's suspicious order monitoring system did</p> <p>16 you review?</p> <p>17 A. I can't recall.</p> <p>18 Q. What's your best guess?</p> <p>19 A. No guess.</p> <p>20 Q. Less than 100?</p> <p>21 A. No guess.</p> <p>22 Q. Are you familiar with the</p> <p>23 report called the "Item Review Report"?</p> <p>24 A. No. Not by name.</p>	<p style="text-align: right;">Page 762</p> <p>1 A. Not at -- not by memory.</p> <p>2 Q. The store metrics report?</p> <p>3 A. No.</p> <p>4 Q. Did you review any documents</p> <p>5 relating to training that CVS SOM team</p> <p>6 members received on SOM?</p> <p>7 A. I think so.</p> <p>8 Q. What can you tell me about the</p> <p>9 training they received?</p> <p>10 A. Nothing without looking at the</p> <p>11 documents.</p> <p>12 Q. Okay. Can you identify any</p> <p>13 suspicious orders of prescription opioids</p> <p>14 that CVS shipped to Summit or Cuyahoga</p> <p>15 County?</p> <p>16 A. No.</p> <p>17 Q. Do you even know what</p> <p>18 prescription opioids CVS shipped to Cuyahoga</p> <p>19 and Summit counties?</p> <p>20 A. I don't think I have a list of</p> <p>21 them in my possession, but I could find that</p> <p>22 out through the ARCOS database that we have</p> <p>23 access to.</p> <p>24 Q. Well, sitting here today,</p>

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1 what's your best recollection?
2 A. I don't have a recollection.
3 Q. Do you know whether CVS shipped
4 oxycodone to CVS retail pharmacies in Summit
5 and Cuyahoga County?
6 A. I do not have a recollection.
7 Q. Do you know whether they
8 shipped fentanyl?
9 A. I do not know.
10 Q. Do you know whether they
11 shipped hydrocodone combination products?
12 A. I do not know.
13 Q. Do you know the names of the
14 people who staffed CVS's SOM team?
15 A. No.
16 Q. Do you know who managed the
17 team?
18 A. No.
19 Q. Do you know where the team was
20 located?
21 A. No.
22 Q. Did you attempt to review
23 depositions of any staff members who worked
24 on CVS's SOM team?

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1 A. No.
2 Q. I want to talk about the
3 venture that's discussed in your report.
4 Your opinion states that -- or
5 is your opinion that CVS joined the venture?
6 Or was a member of the venture?
7 A. Yes.
8 Q. Which CVS entities in your
9 opinion were a member of the venture?
10 A. I didn't distinguish any. So.
11 I'm talking about -- when I
12 talk about CVS, I'm talking about the
13 corporate parent. I didn't break it into
14 subsidiaries.
15 Q. So your opinion is not that CVS
16 Indiana LLC was a member of the venture?
17 A. My opinion is that CVS and its
18 subsidiaries were a member of the venture.
19 Q. Your report doesn't state when
20 CVS and its subsidiaries became members of
21 the venture, does it?
22 A. Correct.
23 Q. It also doesn't state when
24 Walmart became a member of the venture, does

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1 it?
2 A. Correct.
3 Q. And it doesn't state when
4 Rite Aid became a member of the venture, does
5 it?
6 A. Correct.
7 Q. Do you have an opinion on when
8 CVS or its subsidiaries became members of the
9 venture?
10 A. No.
11 Q. Do you have an opinion of when
12 Walmart became a member of the venture?
13 A. No.
14 Q. Same question for Rite Aid.
15 A. Same answer.
16 Q. Your report doesn't cite any
17 evidence indicating that CVS agreed to become
18 a member of the venture, does it?
19 A. I'm not sure what you mean by
20 that.
21 Q. You don't cite any evidence or
22 any conduct showing that CVS agreed,
23 voluntarily agreed to become a member of the
24 venture, do you?

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1 A. Well, they were members of the
2 HDMA, and the HDMA was one of the
3 organizations that was part of the venture.
4 Q. Does your report cite any
5 documents or testimony indicating that CVS
6 was a member of HDMA?
7 A. I think so. I think I have a
8 list of members of the HDMA.
9 Q. And that's your only basis for
10 concluding that a CVS entity was a member of
11 the venture?
12 MS. CONROY: Objection.
13 THE WITNESS: No. CVS did --
14 No.
15 Q. (BY MR. HYNES) Okay. What
16 other conduct do you believe CVS took -- or
17 undertook as a member of the venture?
18 A. CVS contributed to the
19 overprescription of opioids in these two
20 counties.
21 Q. And what did it do to
22 contribute to the overprescription of opioids
23 in these two counties?
24 A. It filled prescriptions for

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1 those drugs.
2 Q. Would you agree that filling
3 prescriptions is part of the normal business
4 activity for CVS?
5 A. Yes.
6 Q. Would you agree that it happens
7 every day?
8 A. Yes.
9 Q. Would you agree that it may
10 happen even with respect to prescriptions
11 that you have written for your patients?
12 A. Yes.
13 Q. Would you agree that there is
14 nothing inherently wrong with filling
15 prescriptions for prescription opioids?
16 A. Yes.
17 Q. You testified earlier that you
18 read the complaint in this case; right?
19 A. Correct.
20 Q. Are you familiar with
21 plaintiffs' claims against CVS?
22 A. I don't -- I haven't separated
23 them out, no.
24 Q. Are you aware that plaintiffs'

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1 claims against CVS do not relate to its
2 dispensing of prescription opioids?
3 A. Yes.
4 Q. So you know that its claims --
5 plaintiffs' claims relate only to CVS's
6 distribution of prescription opioids?
7 A. Yes.
8 Q. Is it -- besides joining HDMA
9 and filling prescriptions for prescription
10 opioids, are you aware of any -- or is it
11 your opinion that CVS did anything else or
12 took any other action in furtherance of the
13 so-called venture?
14 A. Yes.
15 Q. What else?
16 A. It remained silent as to the
17 nature of the opioid epidemic, the
18 overprescription of opioids and the addiction
19 epidemic.
20 Q. So --
21 A. CVS failed to act on the
22 information available to it about upstream
23 orders, downstream sales, physician -- CVS,
24 unlike some other distributors, had the

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1 ability to get data all the way down to the
2 patient level. So CVS had the capability,
3 which they did not use, to determine which
4 physicians were overprescribing and which
5 patients were over -- being overprescribed.
6 CVS failed to take action on it.
7 Q. And how do you know CVS had
8 access to that data?
9 A. Because that data is
10 available -- because, first of all, CVS
11 participates in selling that data to IMS and
12 other entities. So they certainly have data
13 on what they sell.
14 CVS can get data from IMS
15 that's broader than just its own sales, so
16 they can look at IMS data over the entirety
17 of these two counties and determine how many
18 prescriptions for opioids are going out the
19 door. They can determine from their own data
20 on their own patients how many of those
21 patients are getting prescriptions from
22 multiple pharmacies, multiple physicians.
23 They can see which physicians are
24 overprescribing from their pharmacy data

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1 downstream.
2 So while all of the
3 distributors could do that and track orders
4 right down to the pharmacy level out the
5 door, CVS, because it was a vertically
6 oriented distributor pharmacy operation, had
7 more access to that data, more easily
8 acquired, and more easily used than some of
9 the distributors would have had to take it an
10 extra step.
11 Q. But none of those opinions are
12 reflected in your report, are they?
13 A. No, I think they are.
14 Q. Where?
15 A. I think the whole idea that
16 the --
17 Well, first of all, they had
18 that general opinion that we went through
19 before. That had any of the participants in
20 the venture --
21 Q. Sir, your opinion you just
22 stated about CVS's failure to act based on
23 information it had at its disposal is not
24 stated in your report; is that right?

<p style="text-align: right;">Page 771</p> <p>1 MS. CONROY: Objection.</p> <p>2 Q. (BY MR. HYNES) That's a</p> <p>3 yes-or-no question.</p> <p>4 A. I answered it.</p> <p>5 Q. You --</p> <p>6 A. Your last question was where,</p> <p>7 okay?</p> <p>8 I answered that question</p> <p>9 before. You asked, and I said, "No, I think</p> <p>10 they are."</p> <p>11 Your next question was "Where"?</p> <p>12 I was answering the "where" question which</p> <p>13 you interrupted, which is perfectly --</p> <p>14 Q. Can you point me to the section</p> <p>15 number?</p> <p>16 A. -- which is perfectly fine. I</p> <p>17 have no problem with you interrupting my</p> <p>18 answer. That's what the judge ruled. It</p> <p>19 just means my answer is incomplete.</p> <p>20 Q. That's fine. Your answer is</p> <p>21 incomplete.</p> <p>22 Can you point me to a section</p> <p>23 or page number where that opinion is stated</p> <p>24 in your report?</p>	<p style="text-align: right;">Page 773</p> <p>1 to conduct occurring in Oklahoma?</p> <p>2 A. Yes.</p> <p>3 Q. So you're aware that it</p> <p>4 relates -- that it does not relate to conduct</p> <p>5 occurring in Cuyahoga or Summit County?</p> <p>6 MS. CONROY: Objection.</p> <p>7 THE WITNESS: Well, the</p> <p>8 citation's specific to Oklahoma.</p> <p>9 Q. (BY MR. HYNES) Okay.</p> <p>10 A. That's correct.</p> <p>11 Q. Are you aware the settlement</p> <p>12 relates to conduct occurring at CVS retail</p> <p>13 pharmacies?</p> <p>14 A. Yeah, let me look at it so I</p> <p>15 don't make any mistakes.</p> <p>16 MS. CONROY: What's the number,</p> <p>17 4.89?</p> <p>18 MR. HYNES: B.489.</p> <p>19 Q. (BY MR. HYNES) Sir, while</p> <p>20 we're looking for the document, I'll ask some</p> <p>21 questions. We're short on time.</p> <p>22 On the course of your --</p> <p>23 A. Do you want to withdraw the</p> <p>24 previous question?</p>
<p style="text-align: right;">Page 772</p> <p>1 A. The opinion -- I cannot without</p> <p>2 looking at the report give you the page</p> <p>3 number and the opinion number. I can tell</p> <p>4 you generally, for example, the opinion that</p> <p>5 I discussed --</p> <p>6 Q. I don't need to hear --</p> <p>7 That's fine.</p> <p>8 A. Okay. My opinion is</p> <p>9 incomplete.</p> <p>10 Q. That's fine.</p> <p>11 A. My answer is incomplete.</p> <p>12 Q. Sir, your opinion at</p> <p>13 Exhibit B.489 cites a DEA settlement CVS</p> <p>14 entered into on March 28, 2013. Is that</p> <p>15 correct?</p> <p>16 A. What opinion number is it?</p> <p>17 Q. Exhibit No. B.489.</p> <p>18 A. What page?</p> <p>19 Q. I'll just show it to you.</p> <p>20 A. That's correct.</p> <p>21 Q. Did you review that settlement</p> <p>22 agreement?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware that it relates</p>	<p style="text-align: right;">Page 774</p> <p>1 Q. Yeah. I'll go back to it.</p> <p>2 A. Do you want to withdraw it?</p> <p>3 Q. It's withdrawn.</p> <p>4 In the course of your work on</p> <p>5 this engagement, did you review any DEA</p> <p>6 settlements with CVS related to distribution</p> <p>7 of prescription opioids to Cuyahoga or Summit</p> <p>8 County?</p> <p>9 A. No.</p> <p>10 MR. HYNES: We're good, then.</p> <p>11 THE VIDEOGRAPHER: Off the</p> <p>12 record at 4:57.</p> <p>13 MR. HYNES: Pass the witness.</p> <p>14 (Recess taken, 4:56 p.m. to</p> <p>15 4:58 p.m.)</p> <p>16 THE VIDEOGRAPHER: We are back</p> <p>17 on the record at 4:59.</p> <p>18 EXAMINATION</p> <p>19 BY MS. MCENROE:</p> <p>20 Q. Dr. Egilman, I have very little</p> <p>21 time with you, so I'm going to try and just</p> <p>22 do some "yes" or "no" questions like you did</p> <p>23 with some of my colleagues earlier today.</p> <p>24 You're a medical doctor;</p>

<p style="text-align: right;">Page 775</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you testified earlier today</p> <p>4 or yesterday about a specific patient you had</p> <p>5 who was addicted to opioids to whom you</p> <p>6 prescribed opioids; is that correct?</p> <p>7 That's a yes-or-no question.</p> <p>8 MS. CONROY: While he's</p> <p>9 answering, could you identify who you</p> <p>10 represent on the record.</p> <p>11 MS. MCENROE: Yes,</p> <p>12 Elisa McEnroe from Morgan Lewis for</p> <p>13 Rite Aid.</p> <p>14 THE WITNESS: Yes.</p> <p>15 Q. (BY MS. MCENROE) If the</p> <p>16 pharmacy had refused to fill that</p> <p>17 prescription for that particular patient,</p> <p>18 could that have brought that patient harm?</p> <p>19 A. Anything is possible. I don't</p> <p>20 think so.</p> <p>21 Q. You wrote those prescriptions</p> <p>22 for that addicted patient because you said</p> <p>23 that he needed them because of his withdrawal</p> <p>24 symptoms; correct?</p>	<p style="text-align: right;">Page 777</p> <p>1 487.</p> <p>2 A. What page?</p> <p>3 Q. On page 135.</p> <p>4 A. Okay.</p> <p>5 Q. You'll see it says "Opinion.</p> <p>6 Rite Aid provided marketing services to</p> <p>7 Teva," and then there's a cite to</p> <p>8 Exhibit B487. Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Did I read that correctly?</p> <p>11 A. You did.</p> <p>12 (Whereupon, Deposition Exhibit</p> <p>13 Egilman 50, B.487, was marked for</p> <p>14 identification.)</p> <p>15 Q. (BY MS. MCENROE) We're handing</p> <p>16 you what's been marked as Exhibit 50 which is</p> <p>17 also Exhibit B487 from your report. You've</p> <p>18 been handed two folders; a green folder and a</p> <p>19 Redweld. Can you describe to me what's in</p> <p>20 front of you?</p> <p>21 MS. CONROY: Do you have a copy</p> <p>22 of the exhibit for me?</p> <p>23 MS. MCENROE: Oh, I do. Two,</p> <p>24 if you want.</p>
<p style="text-align: right;">Page 776</p> <p>1 A. No.</p> <p>2 Q. Okay. The record will stand</p> <p>3 with what you testified to yesterday.</p> <p>4 Today you're going to be asked</p> <p>5 some questions about Rite Aid of Maryland,</p> <p>6 Inc., doing business as Mid Atlanta Customer</p> <p>7 Support Center. I'm going to call that</p> <p>8 Rite Aid. Okay?</p> <p>9 A. Yes.</p> <p>10 Q. You understand that's the</p> <p>11 Rite Aid entity that's been sued in this</p> <p>12 litigation?</p> <p>13 A. I'll take your word for it.</p> <p>14 Q. Okay.</p> <p>15 A. I have no independent</p> <p>16 understanding of that.</p> <p>17 Q. Have you read the complaint in</p> <p>18 this case?</p> <p>19 A. Yes.</p> <p>20 Q. I'd like to direct your</p> <p>21 attention to Exhibit 1F. I think that's your</p> <p>22 report. You have it in front of you.</p> <p>23 A. I do.</p> <p>24 Q. And in particular to opinion</p>	<p style="text-align: right;">Page 778</p> <p>1 MS. CONROY: One is fine.</p> <p>2 MS. MCENROE: Great.</p> <p>3 Q. (BY MS. MCENROE) What is in</p> <p>4 front of you, Dr. Egilman, that was handed to</p> <p>5 you by plaintiffs' counsel?</p> <p>6 A. Same exhibits.</p> <p>7 Q. Is there anything different</p> <p>8 about the documents you were handed in those</p> <p>9 folders?</p> <p>10 A. It doesn't appear to be.</p> <p>11 Q. And do you have a copy of that</p> <p>12 exhibit for which you have handwriting or</p> <p>13 sticky notes like you described yesterday in</p> <p>14 the box that you have brought with you?</p> <p>15 MS. CONROY: There are no notes</p> <p>16 or stickers on the document.</p> <p>17 MS. MCENROE: Great. Okay.</p> <p>18 Q. (BY MS. MCENROE) So that's the</p> <p>19 only exhibit you have with respect to opinion</p> <p>20 487 regarding Rite Aid; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Do you have any other opinions</p> <p>23 naming Rite Aid in your report?</p> <p>24 A. I don't recall.</p>

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1 Q. If you had, would that have
2 been included in the material plaintiffs just
3 handed you?

4 A. Not necessarily.

5 Q. Would you expect that it would
6 have been?

7 A. No.

8 Q. Can you identify for me any
9 other single opinion that identifies Rite Aid
10 in your report as we sit here today?

11 A. No.

12 Q. Taking a look at the attachment
13 you have or the exhibit that you have for
14 opinion 487, you'll see that the top says
15 "Teva Fentanyl Patches IVR, Statement of
16 Work." Do you see that?

17 A. Yes.

18 Q. Okay. Did you read this
19 document before?

20 A. Yes.

21 Q. Did you pick this document out
22 of the database?

23 A. Well, I picked it to be in the
24 report. I don't think I did the search that

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1 found the document.

2 Q. Did you actually type the words
3 into your report, "Opinion. Rite Aid
4 provided marketing services to Teva"? Did
5 you type those words?

6 A. I think so, yes.

7 Q. Did you do that based on this
8 exhibit?

9 A. Yes.

10 Q. Did you do it based on anything
11 else?

12 A. Not that I can recall.

13 Q. Can you identify anything else
14 as we sit here today that you did that on
15 behalf of?

16 A. No.

17 Q. Take a look at the last page of
18 this document.

19 A. Right.

20 Q. It's unsigned; correct?

21 A. Correct.

22 Q. Have you ever seen a signed
23 copy?

24 A. No.

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1 Q. Do you have any other evidence
2 supporting your opinion that Rite Aid
3 provided marketing services to Teva?

4 A. No.

5 Q. You testified a little bit
6 earlier that each defendant in this case is
7 100% responsible for the opioid crisis; is
8 that correct?

9 A. Yes.

10 Q. So you're taking the opinion
11 that Rite Aid is 100% responsible for the
12 opioid crisis on the basis of one unsigned
13 contract; is that right?

14 A. No.

15 Q. What other evidence have you
16 provided with your report that says that
17 Rite Aid is responsible for 100% of the
18 opioid crisis?

19 A. All of the evidence that I
20 provided in my report relates to what was
21 known or knowable by Rite Aid with respect to
22 the venture.

23 Q. And that was true of yourself
24 at the same time; correct, Dr. Egilman?

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1 A. Let me just say my answer is
2 incomplete.

3 Q. Fine. That's fine.

4 A. Now you can interrupt and ask
5 the other question.

6 Q. That's true of yourself as
7 well, right, just as much as it's true of
8 Rite Aid?

9 MS. CONROY: Objection.

10 THE WITNESS: Which is true?

11 Q. (BY MS. MCENROE) The
12 information that you said was available to
13 Rite Aid was equally available to yourself to
14 make it 100 percent responsible for the
15 opioid crisis.

16 A. No, it wasn't.

17 Q. Do you know what, if any,
18 opioids Rite Aid distributed into Cuyahoga or
19 Summit counties?

20 A. I don't know which ones they
21 distributed, no.

22 Q. Do you know if they ever did
23 distribute opioids into Cuyahoga or Summit
24 County? For a fact?

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1 A. For a fact? I assume they did.
2 Q. You assume so, but do you know
3 that?
4 A. I haven't seen the data on
5 their sales --
6 Q. Okay.
7 A. -- into the county.
8 Q. Do you know --
9 A. But if they didn't sell, I
10 would assume you wouldn't be sitting there.
11 It's an easy summary judgment motion.
12 Q. So you testified earlier that
13 you did not base your opinions on any
14 assumptions; is that correct?
15 A. Correct.
16 Q. But you have made some
17 assumptions at the very least; correct?
18 A. Do you mean that last one?
19 Q. Question withdrawn.
20 A. That you -- that you're -- that
21 Rite Aid is still in the case?
22 Q. Well, I'm just trying --
23 A. And I don't think that's --
24 Q. I withdrew my question.

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1 There's no question pending.
2 I just want to understand your
3 knowledge base for my client Rite Aid, and it
4 seems to extend just as one unsigned
5 contract. So I'm hoping that you can tell me
6 a little bit more about what you know
7 specifically about Rite Aid, if anything, and
8 I'm not seeing anything else in your report.
9 A. Well.
10 Q. Is there anything else in your
11 report --
12 A. Is that a question?
13 Q. Yeah. Is there anything else
14 in your report about Rite Aid?
15 A. That specifically mentioned
16 Rite Aid?
17 Q. Correct.
18 A. I don't think so.
19 MS. MCENROE: I have no further
20 questions.
21 Can we go off the record?
22 THE VIDEOGRAPHER: Off the
23 record at 5:06.
24 (Recess taken, 5:06 p.m. to

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1 5:07 p.m.)
2 THE VIDEOGRAPHER: We are back
3 on the record at 5:08.
4 EXAMINATION
5 BY MS. FUMERTON:
6 Q. Good afternoon, Dr. Egilman.
7 My name is Tara Fumerton, and I represent
8 Walmart in this litigation.
9 A. Good afternoon.
10 Q. Do you have your report in
11 front of you?
12 A. I do.
13 Q. And could you please turn to
14 page 134 of your report, and I'm going to
15 focus you on opinion 7.480.
16 A. Okay.
17 Q. And so opinion 7.480 is that,
18 quote, Walmart helped Actavis market opioids.
19 End quote; correct?
20 A. Correct.
21 Q. And this is your only
22 Walmart-specific opinion in your report;
23 correct?
24 A. I don't know.

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1 Q. How would you answer that
2 question, then?
3 In other words, you don't know
4 the answer as to whether or not you have
5 other Walmart-specific opinions in your
6 report?
7 A. For the Walmart specifically
8 mentioned, you could search the report. I
9 haven't done that by every company.
10 Q. You haven't. So you have a
11 folder back there that's specific to Walmart.
12 Should we -- would that help you determine
13 whether or not there are other
14 Walmart-specific opinions?
15 MS. CONROY: Objection.
16 THE WITNESS: You know more
17 than I do. Those are not my
18 documents. Those are the plaintiff
19 documents that they brought to the
20 deposition. So I don't know if they
21 have a folder named Walmart or not.
22 Q. (BY MS. FUMERTON) Sitting
23 here, can you identify any other
24 Walmart-specific opinions in your report?

<p style="text-align: right;">Page 787</p> <p>1 A. No.</p> <p>2 Q. And to conclusively answer my</p> <p>3 question as to whether or not there were any</p> <p>4 other Walmart-specific questions -- or</p> <p>5 specific opinions in your report, you would</p> <p>6 need time to review your report; is that</p> <p>7 right?</p> <p>8 A. No. I'd need to do a search in</p> <p>9 a PDF.</p> <p>10 Q. And so if I did a search in the</p> <p>11 PDF and Walmart did not show up in any of the</p> <p>12 titles in your report, could we conclude that</p> <p>13 opinion 7.480 is the only opinion that is</p> <p>14 Walmart specific in your report?</p> <p>15 A. It's the only opinion that</p> <p>16 names Walmart in the opinion, yes.</p> <p>17 Q. So how would you do the search</p> <p>18 of the PDF to determine whether or not there</p> <p>19 were any other Walmart-specific opinions in</p> <p>20 your report?</p> <p>21 A. Well, I'd search it for Walmart</p> <p>22 first, and then there's a Walmart coding</p> <p>23 because Walmart documents may have been used</p> <p>24 for other opinions. And then you could do a</p>	<p style="text-align: right;">Page 789</p> <p>1 Q. Do you have a copy? I do have</p> <p>2 a copy. I didn't want to mark it as another</p> <p>3 exhibit, but I can do so if we need to.</p> <p>4 A. I've probably got it in this</p> <p>5 box here.</p> <p>6 Q. And I also just wanted to</p> <p>7 confirm that I think it's worthwhile to get</p> <p>8 that to make sure that your copy of</p> <p>9 Exhibit B.480 is the same that I have.</p> <p>10 So why don't we go ahead and</p> <p>11 just mark this, then, as an exhibit?</p> <p>12 (Whereupon, Deposition Exhibit</p> <p>13 Egilman 51, Opinion-Walmart helped</p> <p>14 Actavis Market Opioids, was marked for</p> <p>15 identification.)</p> <p>16 Q. (BY MS. FUMERTON) Dr. Egilman,</p> <p>17 is what we just marked as Exhibit 51 the same</p> <p>18 thing as Exhibit B.480 in your report?</p> <p>19 A. Yes.</p> <p>20 Q. And is Exhibit B.480 the best</p> <p>21 evidence that you saw to support your opinion</p> <p>22 that Walmart helped Actavis market opioids?</p> <p>23 A. Yes.</p> <p>24 Q. In fact, there was no other</p>
<p style="text-align: right;">Page 788</p> <p>1 search, you know, whatever the code is,</p> <p>2 asterisk, and then find any other Walmart</p> <p>3 documents that were cited in the report.</p> <p>4 Q. So if there's any Walmart</p> <p>5 documents cited in the report, is it your</p> <p>6 testimony that that, then, is referring to a</p> <p>7 Walmart opinion?</p> <p>8 A. I don't know. I'd have to look</p> <p>9 at them.</p> <p>10 Q. So I'll go back to my original</p> <p>11 question. In order to determine whether</p> <p>12 there were any other Walmart-specific</p> <p>13 opinions in your report, you'd have to review</p> <p>14 not just the report but all of the documents?</p> <p>15 A. Yeah. The report is the report</p> <p>16 and the documents, correct.</p> <p>17 Q. All right?</p> <p>18 A. You'd have to read the whole</p> <p>19 thing.</p> <p>20 Q. Let's look at page 134 of your</p> <p>21 report. You cite Exhibit B.480 in support of</p> <p>22 your opinion that Walmart helped Actavis</p> <p>23 market opioids; correct?</p> <p>24 A. Right.</p>	<p style="text-align: right;">Page 790</p> <p>1 evidence that you relied on as the basis of</p> <p>2 your opinion 7.480; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Now, Exhibit B.480 is a</p> <p>5 PowerPoint slide deck dated May 2014 titled</p> <p>6 "Joint Business Planning" and was produced by</p> <p>7 ANDA; correct?</p> <p>8 A. Correct.</p> <p>9 Q. There are no references to</p> <p>10 marketing opioids in this document; correct?</p> <p>11 A. Not correct.</p> <p>12 Q. And where are there references</p> <p>13 to marketing opioids in this document?</p> <p>14 A. Bates No. 1126042.</p> <p>15 That's one place.</p> <p>16 Q. And --</p> <p>17 A. And then 1126043. And then</p> <p>18 1126049.</p> <p>19 [Document review.]</p> <p>20 Q. (BY MS. FUMERTON) I'm going</p> <p>21 to, just because I'm so short on time, stop</p> <p>22 you with those examples right now and we can</p> <p>23 discuss them. If we need to go to more, we</p> <p>24 can do so.</p>

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1 A. Okay. Can I just make a record
2 that the answer is incomplete.
3 Q. Sure. So let's go back to
4 page 6042, which I think is the first
5 instance that you indicated referenced
6 marketing opioids; is that right?
7 A. Correct.
8 Q. And where do you see the words
9 "marketing" on this page?
10 A. The word "marketing" is not on
11 this page.
12 Q. And so nowhere in this page
13 does it discuss marketing opioids; correct?
14 MS. CONROY: Objection.
15 THE WITNESS: Not true.
16 Q. (BY MS. FUMERTON) Is it your
17 opinion that because this page references
18 sales of opioids that that is the same thing
19 as marketing opioids?
20 A. No, not exactly.
21 Q. So explain to me how this page
22 refers to marketing of opioids.
23 A. This says -- it says planned
24 unit growth to translate in sales and gross

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1 profit, or GP, improvements.
2 And it indicates estimated
3 increases in sales, and it includes
4 specifically hydromorphone and buprenorphine
5 analogs as part of the drugs that are going
6 to increase gross profit.
7 Q. And whose gross profit is being
8 referred to there, do you know?
9 A. Well, it's a joint business
10 planning, so it appears to be both companies.
11 Q. And you're just basing that off
12 of the title of the document; correct?
13 A. That's true. I'm basing it on
14 the title of the document, and I think
15 there's other --
16 That's not necessarily true.
17 I think there's other documents
18 in here that indicate increases in gross
19 profit that may segregate out who's
20 specifically --
21 Yeah, for example, if you look
22 at page 6 of the document, 1126044.
23 Strategy one, products either
24 launched or have been pushed out to Walmart.

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1 Fiscal 2015, and that's indicating an
2 increase. So if you're pushing out more
3 sales to Walmart by Actavis, presumably
4 that's being done to increase Actavis'
5 profits.
6 Q. And so let me ask you --
7 A. And of course if -- and
8 similarly, if Walmart is -- what goes -- what
9 gets pushed from Actavis to Walmart doesn't
10 get stuck in Walmart. It gets sold by
11 Walmart into the community. Otherwise there
12 would be a big backup of opioids at the
13 Walmart stores.
14 Q. In that lengthy explanation
15 that you just gave you did not once use the
16 term "market"; correct? Or "marketing";
17 correct?
18 A. That's true.
19 Q. And in reaching your opinion,
20 based solely on the single document, that
21 Walmart helped Actavis market opioids, you
22 did not consider the testimony of the Walmart
23 employees who testified that Walmart did not
24 market opioids; correct?

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1 A. That's correct.
2 Q. And you also did not consider
3 in formulating your opinion the testimony of
4 Patsy Little, where she described these joint
5 business planning meetings to be a program
6 that was just in place for a couple of years
7 for the purpose of trying to get a lower cost
8 of goods and get supply on items that were
9 hard to supply in the market; correct?
10 A. Correct.
11 MS. FUMERTON: So I'm going to
12 pass the witness at this time. I
13 think that -- I want to put on the
14 record an objection that I think the
15 time that has been allocated to each
16 defendant has been woefully deficient,
17 given the lengthy opinions and the
18 fact that specifically to Walmart, the
19 witness was unable to answer the
20 question as to whether or not there
21 were any other additional
22 Walmart-specific opinions in his
23 report. But given the amount of time
24 that we've been allocated, I have to

<p style="text-align: right;">Page 795</p> <p>1 pass the witness so that other 2 defendants can ask questions as well. 3 Let's go off the record. 4 MS. CONROY: No, I'm not ready 5 to go off the record. Objection, the 6 plaintiffs did not allocate the time 7 among the defendants. You did that 8 yourselves. So we are not responsible 9 for that. 10 MS. FUMERTON: So are you 11 agreeing to expand the deposition 12 beyond 14 hours? 13 MS. CONROY: Absolutely not. 14 You go to the Court and seek an 15 additional -- any additional time. 16 But we did not allocate time among the 17 defendant or determine how much time 18 Walmart would have versus another 19 defendant. 20 MS. FUMERTON: And my objection 21 stands, and let's go off the record. 22 THE VIDEOGRAPHER: Off the 23 record. 5:21. 24 (Recess taken, 5:20 p.m. to</p>	<p style="text-align: right;">Page 797</p> <p>1 analysis regarding how you reached that 2 opinion; correct? 3 A. Can I see B12? 4 MS. CONROY: Sure. 5 MR. PODOLL: That's B12 there 6 if you want a copy, here's a copy. 7 MS. CONROY: Thank you. 8 THE WITNESS: Well, I provide 9 the excerpt of a document that 10 basically -- that says that. 11 Q. (BY MR. PODOLL) Beyond the 12 excerpt of the document that you cite in B12, 13 you don't provide any written analysis 14 regarding how you came to that opinion; 15 right? 16 A. Correct. 17 Q. You don't provide any written 18 analysis regarding how the cited document 19 supports your opinion; correct? 20 A. No. I've got all kinds of 21 arrows showing you what new document supports 22 the opinion. 23 Q. That was my next question. 24 Are the arrows in the opinion</p>
<p style="text-align: right;">Page 796</p> <p>1 5:21 p.m.) 2 THE VIDEOGRAPHER: We are back 3 on the record at 5:22. 4 THE WITNESS: I have to start 5 with the plaintiff time. 6 The opinion that I wrote for 7 453 was incorrect. The opinion should 8 be "Ohio Medicaid had its own 9 formulary committee." 10 Off plaintiff time. 11 EXAMINATION 12 BY MR. PODOLL: 13 Q. Good afternoon, Dr. Egilman. 14 Josh Podoll on behalf of Cardinal Health from 15 Williams and Connolly. 16 A. Oh, good afternoon. 17 Q. Sir, could you turn to page 63 18 of your report? 19 A. Sure. 20 Q. You opine in opinion 7.12 that 21 "Cardinal Health failed to take action for 22 suspicious orders"; correct? 23 A. Correct. 24 Q. You don't provide any written</p>	<p style="text-align: right;">Page 798</p> <p>1 the portions of this document that you 2 believe support your opinion? 3 A. They're the -- the whole 4 document supports the opinion. 5 MS. CONROY: It's the rest of 6 that. 7 THE WITNESS: The whole 8 document supports the opinion, but 9 certainly the arrows point to the most 10 salient parts of the document that 11 support the opinion. 12 Q. (BY MR. PODOLL) Aside from the 13 documents excerpted in B12, you cite no other 14 documents to support your opinion that 15 Cardinal failed to take action for suspicious 16 orders; correct? 17 A. In this opinion, you mean? 18 Q. Correct. 19 A. That's correct. But there are, 20 I think, other documents including Cardinal's 21 fines paid, et cetera, that are cited 22 elsewhere. 23 MR. PODOLL: Move to strike 24 everything after -- oh, our live feed</p>

Page 799	Page 801
<p>1 is gone. Move to strike at -- 2 Let's go off the record and fix 3 the live feed. 4 THE VIDEOGRAPHER: Off the 5 record at 5:25. 6 (Recess taken, 5:25 p.m. to 7 5:25 p.m.) 8 THE VIDEOGRAPHER: We are back 9 on the record at 5:27. 10 MR. PODOLL: Move to strike 11 everything in the prior answer after 12 "That's correct." 13 Q. (BY MR. PODOLL) You cite no 14 deposition testimony to support the opinion 15 that Cardinal failed to take action for 16 suspicious orders; correct? 17 A. Correct. 18 Q. You don't say what methodology 19 you used to reach the opinion that Cardinal 20 failed to take action for suspicious orders; 21 correct? 22 A. No. 23 Q. In Exhibit B12, you don't say, 24 in writing, what methodology you use to</p>	<p>1 Q. Do you know what her 2 responsibilities were with respect to 3 Cardinal's suspicious order monitoring system 4 at the time of this e-mail? 5 A. I don't know what her job 6 description was at the time of this e-mail, 7 no. 8 Q. Did you even try and find out? 9 A. I don't think there were any 10 job descriptions or personnel files in any of 11 the production. 12 Q. Did you ask to read her 13 deposition? 14 A. No. 15 Q. Did you read her deposition? 16 A. No. 17 Q. The excerpts cited in 18 Exhibit B12 refer to a K-Mart store. 19 Do you see that? 20 A. Correct. 21 Q. Do you know where that K-Mart 22 store is located? 23 A. No. 24 Q. Do you know what that K-Mart</p>
Page 800	Page 802
<p>1 support the opinion that Cardinal failed to 2 take action for suspicious orders; correct? 3 A. Correct. 4 Q. You created the -- what is 5 Exhibit B12 to your report; correct? 6 A. Correct. 7 Q. You did that by copying and 8 pasting from a document? 9 MS. CONROY: Objection. 10 Q. (BY MR. PODOLL) From two 11 documents? 12 A. And putting the box and arrows 13 on it. 14 Q. Fair enough. And putting in 15 boxes and arrows. 16 The first box that I see on the 17 page is around a quotation under the 18 signature block of Kimberly Anna-Soisson; is 19 that right? 20 A. Correct. 21 Q. Do you know who Kimberly 22 Anna-Soisson is? 23 A. At the time she was the manager 24 of regulatory management.</p>	<p>1 store's thresholds are? 2 A. No. 3 Q. Exhibit B12 does not mention 4 any specific order of opioids; correct? 5 I'll withdraw the question. 6 Do you know whether Cardinal 7 today has a suspicious order monitoring 8 system? 9 A. Yes, they do. 10 Q. Do you know when that system 11 was put in place? 12 A. The current system? 13 Q. Yes. 14 A. No, I do not. 15 Q. Do you know when any suspicious 16 order monitoring system was put in place for 17 Cardinal Health? 18 A. Sometime after 2007, 2008. 19 Q. Do you know whether Cardinal 20 Health had a suspicious order monitoring 21 system before 2007 or 2008? 22 A. Not the one that was effective. 23 Maybe a paper program. 24 MR. PODOLL: Move to strike.</p>

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1 Q. (BY MR. PODOLL) Do you know
2 whether Cardinal Health had any system to
3 monitor suspicious orders before 2007 and
4 2008, "yes" or "no"?
5 A. Not a functioning system.
6 Q. Is it your testimony that
7 Cardinal Health had no system to monitor
8 suspicious orders before 2007 or 2008?
9 A. No.
10 Q. Is it your testimony that
11 Cardinal Health did have a system to monitor
12 suspicious orders before 2007 or 2008?
13 A. Yes. Not a functioning system.
14 MR. PODOLL: Move to strike
15 everything after "Yes."
16 Q. (BY MR. PODOLL) Do you know
17 how Cardinal Health flagged suspicious orders
18 at any time?
19 A. They had a baseline, and if you
20 went over the baseline by a certain amount,
21 they get a flagged order.
22 Q. Do you know what criteria
23 Cardinal Health used to set that baseline?
24 A. Well, that's changed over time,

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1 but the answer is I don't recall it for any
2 particular point in time.
3 Q. Do you know who was --
4 MS. CONROY: There are
5 handwritten notes on the exhibit that
6 you -- that are already marked as
7 Exhibit 28.
8 MR. PODOLL: Thank you,
9 Counsel. Could I see that?
10 THE WITNESS: And there's
11 actually new stuff in this one.
12 It's the Brown alumni folder.
13 MR. PODOLL: All right. I am
14 going to reserve some time to deal
15 with this, but I'm going to keep going
16 for now. Thank you, Counsel.
17 MS. CONROY: Let me put it back
18 in the exhibit, then.
19 MR. PODOLL: I appreciate it.
20 Q. (BY MR. PODOLL) Do you know
21 who was responsible for Cardinal Health's
22 suspicious order monitoring system in 2012?
23 A. The CEO.
24 Q. Do you know which employee had

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1 direct supervisory responsibility for
2 Cardinal Health's suspicious order monitoring
3 system in 2012?
4 Strike that.
5 Do you know which Cardinal
6 Health employee had day-to-day responsibility
7 for Cardinal Health's suspicious order
8 monitoring system in 2012?
9 A. No.
10 Can we stop for a second
11 because mine is not working?
12 Q. Yes. Let's go off the record.
13 THE VIDEOGRAPHER: Off the
14 record at 5:32.
15 (Recess taken, 5:31 p.m. to
16 5:32 p.m.)
17 THE VIDEOGRAPHER: We are back
18 on the record at 5:33.
19 Q. (BY MR. PODOLL) Do you know
20 which Cardinal Health employee had day-to-day
21 responsibility for Cardinal Health's
22 suspicious order monitoring system in 2016?
23 A. No.
24 Q. Do you know how many employees

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1 had day-to-day responsibility -- how many
2 Cardinal Health employees had day-to-day
3 responsibility for suspicious order
4 monitoring at any time?
5 A. No.
6 Q. Did you review the deposition
7 testimony of Cardinal Health employees who
8 were responsible day to day for suspicious
9 order monitoring?
10 A. No.
11 Q. Did you review the deposition
12 testimony of any Cardinal Health employees?
13 A. No.
14 Q. I'd like you to turn to
15 page 106 of your report. And tell me when
16 you're there.
17 A. I am there.
18 Q. Your opinion 7.299 is "The
19 wholesale or performance agreement between
20 Purdue and Cardinal was a concerted action to
21 sell and promote opioids."
22 Is that right?
23 A. Correct.
24 Q. Your support for that is

Page 807	Page 809
<p>1 Exhibit B299; right?</p> <p>2 Opinion B 299; correct? Which</p> <p>3 I am handing you.</p> <p>4 A. Right.</p> <p>5 Can you hand me the whole Bates</p> <p>6 number document?</p> <p>7 Q. Sure. Here is the entire</p> <p>8 document.</p> <p>9 A. Okay. Great. Thanks.</p> <p>10 I've got the whole thing.</p> <p>11 Very good.</p> <p>12 Brown alumni have good lawyers.</p> <p>13 Q. I wish I'd gone to Brown. I</p> <p>14 went to a rival school.</p> <p>15 A. No problem.</p> <p>16 He's on the Brown board of</p> <p>17 trustees. President of Cardinal.</p> <p>18 Q. You're not a lawyer; correct?</p> <p>19 A. Correct.</p> <p>20 I don't play one on TV.</p> <p>21 Q. You're not offering a legal</p> <p>22 opinion related to the meaning of concerted</p> <p>23 action; correct?</p> <p>24 A. Correct.</p>	<p>1 A. No.</p> <p>2 Q. Do you know the terms of any</p> <p>3 agreements between Purdue and Cardinal Health</p> <p>4 that were in fact entered?</p> <p>5 A. Well, there are other marketing</p> <p>6 agreement documents, as I recall, that are</p> <p>7 elsewhere in the report. And I think they're</p> <p>8 Cardinal-Purdue documents.</p> <p>9 Q. Can you point me, sitting here</p> <p>10 today, to the terms of any -- of any</p> <p>11 distributor performance agreement between</p> <p>12 Cardinal Health and Purdue?</p> <p>13 A. No.</p> <p>14 Q. Do you have any knowledge about</p> <p>15 this agreement that I couldn't get by</p> <p>16 performing the searches you performed and</p> <p>17 reading the documents you read?</p> <p>18 A. No.</p> <p>19 MR. PODOLL: All right. Let's</p> <p>20 go off the record.</p> <p>21 THE VIDEOGRAPHER: Off the</p> <p>22 record at 5:38.</p> <p>23 (Recess taken, 5:37 p.m. to</p> <p>24 5:37 p.m.)</p>
Page 808	Page 810
<p>1 Q. You've never consulted with</p> <p>2 respect -- with an industry -- with Cardinal</p> <p>3 Health, Purdue, or any other distributor or</p> <p>4 manufacturer with respect to wholesaler</p> <p>5 performance agreements; correct?</p> <p>6 A. Correct.</p> <p>7 Q. The excerpt from the document</p> <p>8 that -- your opinion B99 doesn't mention</p> <p>9 opioids, does it?</p> <p>10 Withdrawn.</p> <p>11 I'd like to point you to the</p> <p>12 sentence above the key terms that you've</p> <p>13 boxed in red. Are you there?</p> <p>14 A. Correct.</p> <p>15 Q. That sentence says: Set forth</p> <p>16 below are the key proposed financial terms</p> <p>17 that may form the basis of any future</p> <p>18 distributor agreements between the parties.</p> <p>19 Open parenthesis, collectively, quote, term</p> <p>20 sheet, closed quote, closed parenthesis.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know whether any such</p> <p>24 agreements in fact were entered?</p>	<p>1 MR. PODOLL: I just want to</p> <p>2 make the record that we object to the</p> <p>3 amount of time allotted for this</p> <p>4 deposition. So we can just note that</p> <p>5 on the stenographic record.</p> <p>6 THE WITNESS: I just say,</p> <p>7 anyone's free to call me up anytime</p> <p>8 you want. Ask me any questions you</p> <p>9 want. Chat any time.</p> <p>10 MR. PODOLL: Appreciate it.</p> <p>11 THE WITNESS: My pleasure.</p> <p>12 (Whereupon, Deposition Exhibit</p> <p>13 Egilman 52, Opinion-Ohio Medicaid</p> <p>14 depended on the PBMs for formulary</p> <p>15 drug selection/handwritten notations</p> <p>16 "had its own committee," was marked</p> <p>17 for identification.)</p> <p>18 (Recess taken, 5:39 p.m. to</p> <p>19 5:40.</p> <p>20 THE VIDEOGRAPHER: We are back</p> <p>21 on the record at 5:40:</p> <p>22 MS. CONROY: This is Jayne</p> <p>23 Conroy. We're going to be marking as</p> <p>24 Exhibit 52, opinion B453, which was</p>

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1 corrected on the record by
2 Dr. Egilman.
3 EXAMINATION
4 BY MS. FINGER:
5 Q. Dr. Egilman, my name is Anna
6 Finger. I'm at Locke Lord, and I represent
7 Henry Schein, Incorporated and Henry Schein
8 Medical Facility, Incorporated. I'm going to
9 refer to them herein as Henry Schein or the
10 Henry Schein defendants. Is that okay?
11 A. Sure.
12 Q. And so you had access to review
13 all documents produced by Henry Schein in
14 this litigation; correct?
15 A. Right. I think they came in
16 late, though. So I didn't have that much
17 time on those documents.
18 Q. Okay. But you had access to
19 all of their documents; correct?
20 A. Right. At some point in time.
21 Q. Okay. And you do not list any
22 opinions in your report that specifically
23 mention Henry Schein; correct?
24 A. Correct.

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1 Q. And Henry Schein is not
2 specifically identified as a member in what
3 you call "the venture"; correct?
4 A. Correct.
5 MS. FINGER: That's all I have.
6 I'll pass the witness.
7 THE WITNESS: Great job.
8 EXAMINATION
9 BY MS. SAULINO:
10 Q. Dr. Egilman, it's Jennifer
11 Saulino for McKesson again. I'm back.
12 A. Welcome back.
13 Q. Thank you.
14 So first, because you've kindly
15 made this offer to us several times, I'd like
16 to ask you, on the record, whether you are
17 willing to sit for additional hours of the
18 deposition so that all of the defendants can
19 have sufficient time to explore your numerous
20 opinions.
21 A. No. Unless ordered by the
22 judge.
23 Q. Okay. So you are only willing
24 to talk by telephone with us?

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1 A. Or in person.
2 Q. Or in person?
3 A. If you want to buy me dinner,
4 I'd be glad to go to dinner with you.
5 Q. Okay.
6 A. Particularly if it's one of the
7 Italian restaurants in Federal Hill. Or one
8 of my staff seems to like Chicken McNuggets,
9 but I have a more expensive palate than she
10 does.
11 Q. Okay. And --
12 A. And yet I would be glad to talk
13 to you without. And I don't drink, so that's
14 a cheap date in terms of alcohol.
15 Q. Would it be all right if we
16 brought a court reporter to the dinner?
17 A. I'd prefer not.
18 Q. Okay. But that's something we
19 could talk about, then?
20 A. Correct.
21 Q. So your objection is just to a
22 formal notice of deposition? Is that --
23 A. My objection is to a formal
24 proceeding that --

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1 I don't know if you know this
2 or not, but I've been here for about 14 hours
3 straight, and -- well, I've enjoyed myself.
4 It is a little bit tiring and stressful. And
5 so I prefer a more informal setting and
6 conversation and a back-and-forth.
7 This involves a question and an
8 answer, unidirectional and not a discussion.
9 So I think discussions are
10 generally more fruitful in terms of figuring
11 out what really is going on, what my opinions
12 really are, et cetera.
13 But, you know, that's just --
14 that's my view about how things work.
15 Q. You'd agree with me, Doctor,
16 wouldn't you, that we just haven't had
17 sufficient time to explore what's really
18 going on with your opinions and what your
19 opinions really are?
20 A. No.
21 MS. CONROY: Objection.
22 THE WITNESS: I think you had
23 plenty of time to do that. I don't
24 think you came quite prepared to do

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1 it, but you had plenty of time to do
2 it.
3 Q. (BY MS. SAULINO) You'd agree
4 with me that we have not discussed every
5 single one of your 490 opinions in the last
6 two days, have we?
7 A. Not specifically, correct.
8 Q. You'd also agree with me,
9 Doctor, that unless specifically referenced
10 in an opinion, you have not reviewed
11 deposition testimony for any particular
12 opinion, unless it's specifically referenced
13 in your -- in your report.
14 A. No.
15 MS. CONROY: Objection.
16 Q. (BY MS. SAULINO) You would
17 agree with me, however, that there's no way
18 for us to know what deposition testimony you
19 may have reviewed for any particular opinion
20 unless you cite it?
21 MS. CONROY: Objection.
22 THE WITNESS: No.
23 Q. (BY MS. SAULINO) There is a
24 way for us to know?

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1 A. Well, there was a way for you
2 to know. It's called a depo notice. The
3 depo notice could include a request for me to
4 give you a list of all the depositions I
5 reviewed. You didn't do that. So I didn't
6 bring the list of all of the depositions I
7 reviewed because you didn't ask for it.
8 Q. Well, Doctor --
9 A. I did bring lot of other
10 things, but I didn't bring that.
11 Q. Dr. Egilman, in fact, in your
12 report you say that you reviewed all of the
13 depositions.
14 A. No, I don't. I say I reviewed
15 depositions. I didn't say all of the
16 depositions.
17 Q. Are you now agreeing to provide
18 a list of each deposition that you reviewed
19 with respect to each opinion?
20 A. No. I'm not agreeing to
21 anything.
22 Q. Okay. And you would agree --
23 A. You asked a different question.
24 You asked if there was a way you could have

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1 found out what depositions I reviewed before
2 the deposition. And there was. You could do
3 a notice of deposition. You could make that
4 request, and I would have complied with that
5 request.
6 You didn't do that.
7 Q. You would agree with me that
8 that is not anywhere listed in your report
9 except for particular opinions that do -- a
10 few particular opinions that do cite
11 depositions; right?
12 A. The "no" there is depositions I
13 reviewed? Correct. The question is
14 ambiguous. I just cleared it up in my
15 answer.
16 Q. All right. Dr. Egilman, just
17 so we're clear, on the record, you would
18 agree with me that there is nowhere in your
19 report where you have listed with respect to
20 any particular opinion that a deposition was
21 something that you reviewed for that opinion
22 except for the few opinions where you do cite
23 to a deposition. Right?
24 A. That's correct.

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1 Q. Okay. And you would agree with
2 me, Dr. Egilman, that in none of your
3 individual opinions do you provide specific
4 information for that opinion about how you
5 retrieved the document or documents that you
6 list as support for that opinion; right?
7 A. That's correct. I didn't give
8 you the complete trail of iterative searches
9 for each document.
10 Q. And you would agree with me,
11 that in none of your individual opinions do
12 you provide specific information about how
13 you determined what constituted the best
14 evidence for that particular opinion; right?
15 A. Correct. It's the best
16 evidence that I could find that supported the
17 opinion.
18 Q. Okay. Just so I make sure I
19 understand what you're saying, the evidence
20 that you provide in support of any particular
21 opinion is your best evidence for that
22 opinion?
23 A. It's the best evidence --
24 Well, a lot of the opinions

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1 relate to each other. So the report has to
2 be taken as a -- as a package. And we've
3 gone through this over the past two days, and
4 I --
5 Q. I know.
6 A. -- I've said this many times.
7 So there are opinions that relate to each
8 other that support each other. So for any
9 particular opinion, there's other --
10 generally other opinions that support that
11 opinion.
12 Q. And as you and I have discussed
13 previously, you didn't provide us any
14 cross-referencing for those opinions that
15 support each other; right?
16 A. That's correct. You'd have to
17 read the whole report.
18 Q. And figure it out for
19 ourselves; right?
20 MS. CONROY: Objection.
21 THE WITNESS: Well, I think --
22 that's correct. You would have to
23 read and understand the report.
24 Q. (BY MS. SAULINO) Okay. But

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1 you did not provide us with any documentation
2 about which opinions you believe support one
3 another; right?
4 Would you like me to add the
5 word "specifically"? Would that help?
6 A. Yeah, sure. If you add
7 "specific," I can give you an easier answer.
8 Q. Okay.
9 A. That's a yes.
10 Q. Okay.
11 A. Can we just take a quick break?
12 Q. Sure. We only have a couple of
13 minutes left.
14 A. How many have you got?
15 Q. Like five.
16 A. Go ahead.
17 Q. Okay. I mean, if you need a
18 break, Doctor.
19 A. I understand. Go ahead.
20 It was a smaller cup of coffee.
21 Q. Okay.
22 A. If it was another tall, okay?
23 But I can give you another five with a
24 smaller cup.

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1 Q. Okay. So, Doctor, in -- you
2 recall that in 2013, you presented at an FDA
3 public hearing on chronic opioid therapy?
4 A. I do.
5 Q. And that was an opportunity to
6 reach doctors, scientists, FDA officials and
7 even the public?
8 A. Well, some of them, yes.
9 Q. At no point during that
10 presentation did you sound the alarm about
11 the role of distributors or pharmacies in the
12 opioid epidemic, did you?
13 A. That's correct.
14 Q. You've also served as an expert
15 in litigation involving opioids; right?
16 A. Correct.
17 Q. You've written expert reports
18 and you've given depositions; right?
19 A. Correct.
20 Q. But until you were retained as
21 an expert in this case, you never offered an
22 opinion that any distributors' or pharmacies'
23 marketing led to the abuse or misuse of any
24 opioid medication; right?

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1 A. Until I saw the documents that
2 were produced in this litigation, correct.
3 Q. In 2006 you published a book
4 chapter about anti-warnings that contained a
5 discussion about opioids; right?
6 A. Correct.
7 Q. And you did not place any blame
8 on any distributor or any pharmacy for what
9 you called the opioid public health problem;
10 right?
11 A. Correct.
12 MS. SAULINO: So, Doctor, right
13 now I'd like to put on the record a
14 standing objection on behalf of all of
15 the defendants in this litigation,
16 that we were limited to 14 hours total
17 of time. And while we did allocate
18 that time amongst ourselves, it was
19 not sufficient time for us
20 collectively to each sufficiently
21 explore all of your opinions, all 490
22 of your opinions in your report, plus
23 the additional bases that you've
24 provided to us over the last couple of

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1 days.
2 And so on behalf of all
3 defendants, we object to the time
4 that's been allotted, and we'd like to
5 keep this deposition open in order to
6 have sufficient time to explore your
7 opinions so that we can understand all
8 of the many, many bases and your
9 criteria for your opinions that you
10 yourself have admitted during this
11 deposition is not specifically listed
12 anywhere in your report.
13 THE WITNESS: Is that a
14 question?
15 Was that a question?
16 MS. SAULINO: No. It was not.
17 Further, Dr. Egilman, we will
18 note for the record that you have
19 26 boxes behind you filled with
20 materials. You came with additional
21 bases that you evidently created the
22 night before the deposition that are
23 stacked in front of us and are now
24 marked as Exhibit 28. We were given

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1 no notice of the additional bases and
2 opinions, unless and until we happened
3 upon them when we were asking
4 questions.
5 And so on behalf of all of the
6 defendants, I will also object to that
7 issue.
8 THE WITNESS: Is that a
9 question for me?
10 MS. SAULINO: No, it is not,
11 Dr. Egilman.
12 THE WITNESS: So are we done,
13 then?
14 MS. SAULINO: If you can give
15 me one moment, Dr. Egilman.
16 MS. FUMERTON: Can we just mark
17 those boxes?
18 MS. SAULINO: The court
19 reporter is going to kill us.
20 I do want to -- sorry, are we
21 back on the record?
22 I do want to confirm,
23 Dr. Egilman, that the box that we
24 marked as Exhibit 26 is the

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1 entirety -- plus Exhibit 28, which is
2 the folders in front of you -- is the
3 entirety of things that you have
4 written notes on in order to bring to
5 the deposition?
6 MS. CONROY: It's the opposite.
7 28, and then 26 are the folders here.
8 MS. SAULINO: I apologize.
9 Thank you for correcting that.
10 But those two exhibits are all
11 of what you wrote notes on in order to
12 bring to this deposition?
13 THE WITNESS: No. They were
14 all I wrote notes on.
15 It had nothing to do with
16 bringing it to the deposition. I
17 wrote notes on them, and I brought
18 them to the deposition because I
19 thought it would facilitate the
20 deposition.
21 Q. (BY MS. SAULINO) Did you bring
22 any --
23 A. Make it go fast.
24 Q. Did you bring anything else

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1 that you thought would facilitate the
2 deposition that maybe you didn't write notes
3 on that we haven't marked as an exhibit?
4 A. Yeah, the only thing you didn't
5 mark are the appendices to the Perry report.
6 Oh, and the J&J bad acts boxes.
7 And the books. I brought
8 books. You didn't mark the books.
9 MS. SAULINO: All right. With
10 all of that said, I have no more
11 questions today.
12 MS. CONROY: We do --
13 plaintiffs' counsel, we do not agree
14 to keep this deposition open until
15 there is a court order that there
16 would be any additional time with
17 Dr. Egilman.
18 With respect to the boxes, that
19 was my law firm that brought the
20 copies of exhibits, and the documents
21 to Dr. Egilman's report. And as far
22 as I could tell, counsel here for the
23 most part did not have copies of
24 either the report or the exhibits that

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1 related to them. They're all here,
2 and they were available for both the
3 doctor and for counsel.
4 MS. SAULINO: Okay. Just to
5 correct the record on that, we did
6 mark, actually, at the very beginning
7 of the first day, binders with all of
8 his opinions and the support that we
9 had been given, at least, but those
10 were a little unwieldy. You had your
11 staff back there, and so we took him
12 up on the offer to hand the exhibits
13 to him. But we did have them.
14 THE WITNESS: Excuse me. Just
15 not to interrupt this, and I know I'm
16 enjoying it, but can we go off the
17 video record? I think I'm done.
18 Right?
19 MS. CONROY: I'm just about
20 done.
21 THE WITNESS: The time is up.
22 MS. CONROY: It did not have
23 the full documents. It just had
24 the -- it did not have the full Bates

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1 documents printed in those notebooks.
2 MS. SAULINO: And Dr. Egilman
3 did not provide any indication in his
4 report that those were -- those full
5 Bates documents that were simply cited
6 under the opinions were intended to be
7 considered a part of his report as he
8 defined for me later yesterday.
9 MS. CONROY: I think it's quite
10 clear that that's not true.
11 THE WITNESS: Okay. So I --
12 we're done time-wise, right?
13 MS. SAULINO: Do you have any
14 questions, Ms. Conroy?
15 THE WITNESS: We're over 14
16 hours.
17 MS. SAULINO: Ms. Conroy, do
18 you have any questions?
19 MS. CONROY: I have no
20 questions.
21 MS. SAULINO: If she has
22 questions, then she's allowed to use
23 more time.
24 THE WITNESS: I know. That's

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1 why I asked.
2 THE VIDEOGRAPHER: That
3 concludes today's deposition. The
4 time is 5:56 p.m.
5 (Proceedings recessed at
6 5:56 p.m.)
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1 CERTIFICATE
2 I, DEBRA A. DIBBLE, Registered
3 Diplomate Reporter, Certified Realtime
4 Reporter, Certified Realtime Captioner,
5 Certified Court Reporter and Notary Public,
6 do hereby certify that prior to the
7 commencement of the examination, DAVID S.
8 EGILMAN, M.D., MPH was duly sworn by me to
9 testify to the truth, the whole truth and
10 nothing but the truth.
11 I DO FURTHER CERTIFY that the
12 foregoing is a verbatim transcript of the
13 testimony as taken stenographically by and
14 before me at the time, place and on the date
15 hereinbefore set forth, to the best of my
16 ability.
17 I DO FURTHER CERTIFY that pursuant
18 to FRCP Rule 30, signature of the witness was
19 not requested by the witness or other party
20 before the conclusion of the deposition.
21 I DO FURTHER CERTIFY that I am
22 neither a relative nor employee nor attorney
23 nor counsel of any of the parties to this
24 action, and that I am neither a relative nor
25 employee of such attorney or counsel, and
26 that I am not financially interested in the
27 action.
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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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ERRATA

PAGE LINE CHANGE

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ACKNOWLEDGMENT OF DEPONENT

I, DAVID S. EGILMAN, MD, MPH, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

DAVID S. EGILMAN, M.D., MPH DATE

Subscribed and sworn to before me this _____ day of _____, 20 ____.

My commission expires: _____

Notary Public

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LAWYER'S NOTES

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